Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

9:00 a.m. – March 29, 2016
State Capitol, Room 126

Item	Bill No. & Author	Counsel/ Consultant	Summary
1.	AB 1761 (Weber)	Ms. Uribe	PULLED BY AUTHOR.
2.	AB 1762 (Campos)	Mr. Caswell	Human trafficking: victims: vacating convictions.
3.	AB 1857 (Rodriguez)	Ms. Uribe	PULLED BY AUTHOR.
4.	AB 1924 (Bigelow)	Mr. Caswell	Pen registers: track and trace devices: orders.
5.	AB 1927 (Lackey)	Mr. Billingsley	Criminal procedure: notice to appear.
6.	AB 1953 (Weber)	Mr. Pagan	Peace officers: civilian complaints.
7.	AB 1959 (Rodriguez)	Mr. Pagan	Assault on an emergency medical technician.
8.	AB 1993 (Irwin)	Mr. Caswell	PULLED BY AUTHOR.
9.	AB 2008 (Wagner)	Mr. Caswell	Crimes: sex offender registration: notice of duty to register.
10.	AB 2012 (Bigelow)	Mr. Dean	Jail Industry Program

11.	AB 2027 (Quirk)	Ms. Uribe	Victims of crime: nonimmigrant status.
12.	AB 2061 (Waldron)	Mr. Dean	Supervised Population Workforce Training Grant Program.
13.	AB 2078 (Kim)	Ms. Uribe	Protective orders.
14.	AB 2088 (Linder)	Mr. Pagan	Vehicles: hit-and-run accidents: pleas.
15.	AB 2160 (Bonta)	Ms. Uribe	Crime victims: compensation for pecuniary loss.
16.	AB 2227 (Waldron)	Mr. Billingsley	Vehicles: license suspension and revocation: punishment.
17.	AB 2245 (Cooper)	Mr. Pagan	Firearms: prohibitions: exemptions: probation departments.
18.	AB 2262 (Levine)	Mr. Billingsley	Prisoners: mental health treatment.
19.	AB 2278 (Linder)	Mr. Billingsley	PULLED BY AUTHOR.
20.	AB 2327 (Cooley)	Mr. Caswell	Contacting or communicating with a minor.
21.	AB 2340 (Gallagher)	Mr. Caswell	Gun-free school zone.
22.	AB 2367 (Cooley)	Mr. Billingsley	Driving under the influence: 24/7 Sobriety program.
23.	AB 2369 (Patterson)	Ms. Uribe	Proposition 47: repeat offenses within 12 months.
24.	AB 2387 (Mulling)	Mr. Dean	PULLED BY AUTHOR.
25.	AB 2457 (Bloom)	Mr. Dean	PULLED BY AUTHOR.
26.	AB 2477 (Patterson)	Ms. Uribe	Victim restitution: jurisdiction.

27.	AB 2505 (Quirk)	Mr. Billingsley	Animals: euthanasia.
28.	AB 2508 (Mathis)	Mr. Pagan	Firearms: unsafe handguns.
29.	AB 2524 (Irwin)	Mr. Dean	OpenJustice Data Act of 2016.

Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.

Date of Hearing: March 29, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1762 (Campos) – As Introduced February 2, 2016
As Proposed to be Amended in Committee

SUMMARY: Allows an individual convicted of a nonviolent crime while he or she was human trafficking victim to apply to the court to vacate the conviction at any time after it was entered. Specifically, **this bill**:

1) Allows an individual adjudicated a ward of the juvenile court as the result of a nonviolent crime committed while he or she was a human trafficking victim to apply to have the petition dismissed.

2) Provides, if the application is granted, that the court shall have all records in the case sealed and mandates release of the defendant from all penalties and disabilities, as provided.

3) Defines "human trafficking victim" and "nonviolent crime" for these purposes as follows:

   a) "Human trafficking victim" means "a person who is a victim of labor trafficking, sex trafficking, or trafficking of a minor."

   b) "Nonviolent crime" means "any crime or offense other than murder, attempted murder, voluntary manslaughter, mayhem, kidnaping, rape, robbery, arson, carjacking, or any other violent felony as defined."

   c) Specifies a procedure for victims to apply to the court to have their convictions vacated. The procedure is specified as follows:

      i) Provides that any individual convicted of a nonviolent crime committed while that individual was a human trafficking victim may apply to the court in which the conviction was entered to vacate the conviction at any time after it is entered.

      ii) Requires that the court grant the application on a finding that the applicant's participation in the offense on which the applicant was convicted was a direct result of the applicant being a human trafficking victim.

      iii) Provides that the application shall identify the applicant, the offense for which vacatur is sought, and the court in which the conviction was entered. The applicant shall describe in the application all the available grounds and evidence for vacatur of the conviction known to the applicant.

      iv) Allows the defendant applying for vacatur to submit evidence containing personal identify information under seal along with a statement under penalty of perjury

confirming his or her identity.

v) Provides that the state or local prosecutorial agency shall have 30 days for the date of receipt of service to oppose the application once the application and all relevant information has been served by the agency; provides that if opposition to the application is not filed, the court shall deem the application unopposed and shall grant the application; and specifies that if the application is opposed, the court shall hold a hearing on the application.

vi) Provides that if the court finds, by clear and convincing evidence, that the applicant's participation in the offense on which the conviction was based was a direct result of the applicant being a victim of human trafficking, the court shall grant the application and vacate the conviction, strike the adjudication of guilt, and order the specified relief and may also take additional action and grant additional relief as it deems appropriate under the circumstances.

vii) States that if the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial shall be without prejudice. The court shall state the reasons for its denial in writing and, if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

viii) Specifies that in making a determination on an application the court may consider any evidence it deems of sufficient credibility and probative value, including the sworn statement of the applicant. The statement, alone, is sufficient evidence to support the vacating of a conviction, provided the court finds that the statement is credible. Evidence in support of granting an application may also include, but is not limited to, all of the following:

(1) Certified records of a federal, state, tribal or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, create a rebuttable presumption that an offense was committed by the defendant as a direct result of being a human trafficking victim; and

(2) A sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

ix) Provides that the court shall grant an application if the conviction or adjudication was based on a crime constituting or arising from a commercial sex act, including solicitation for prostitution or loitering with intent to commit prostitution, upon a finding that the applicant was under the age of 18 years at the time of the offense on which the conviction is based.

EXISTING LAW:

1) Provides if a defendant has been convicted of solicitation or prostitution, and if the defendant has completed any term of probation for that conviction, the defendant may petition the court for relief. If the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the court may issue an order that does all of the following: (Pen. Code, § 1203.49.)

   a) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the crime;

   b) Order specified expungement relief; and

   c) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

2) Allows a court to set aside a conviction of a person who has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or who the court in its discretion and the interests of justice, determines that the person should be granted relief, provided that the person is not then serving a sentence for any other offense, is not on probation for any other offense, and is not being charged with any other offense. (Pen. Code, § 1203.4, subd. (a).)

3) Provides that the relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission. (Pen. Code, § 1203.4, subd. (a).)

4) Provides that a person who was under the age of 18 at the time of commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted or charges were dismissed. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code, § 1203.45.)

5) States that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained. This relief is not available to a person who paid money or any other valuable thing, or attempted to pay money or any other valuable thing, to any person for the purpose of prostitution as defined. (Pen. Code, § 1203.47.)

6) States that any person who was under the age of 18 when he or she was arrested for a misdemeanor, may petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in certain circumstances.

(Penal Code, § 851.7.)

7) Allows in certain cases, a person who has reached the age of 18 years to petition the juvenile court for sealing of his or her juvenile record. (Welf. & Inst. Code, § 781.)

8) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (a).)

9) States that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified sex crimes is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (b).)

10) Provides that DOJ shall maintain state summary criminal history information and authorizes DOJ to furnish state summary criminal history information to statutorily authorized entities for specified purposes including employment and licensing. (Pen. Code, § 11105.6.)

11) Prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program. Nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial. This provision does not apply to employment of peace officers. (Lab. Code, § 432.7, subds. (a) & (e).)

12) States that all persons are capable of committing crimes except persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. (Pen. Code, § 26.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: "Human trafficking is the most expansive criminal activity devastating lives across the country and the world.

"Victims of human trafficking include children and adults, men and women, documented and undocumented. Often times these victims have been kidnapped, forced into labor or sexual exploitation, and forced to commit crimes by their traffickers.

"Current law does not provide an adequate remedy for victims who were convicted for non-violent crimes they were forced to commit by their trafficker. Without a legal remedy, victims of trafficking continue to have a criminal record and are prevented from having access to basic services and programs such as the ability to obtain a student loan, receive housing assistance, or obtain employment.

"It is our responsibility to help pull trafficking victims from their abusive environments, as well as to assist in paving a clear path for recovery. AB 1762 would ensure that trafficking victims convicted of non-violent crimes their trafficker forced them to commit could have their criminal records cleared. In doing so, this bill will help dismantle the institutional barriers that these victims encounter throughout their lives."

2) **Amendments to be Taken in Committee Address the Lack of an Expressed Burden of Proof**: This bill, as originally drafted, fails to assign a burden of proof to the applicant seeking to vacate his or her prior nonviolent conviction. Similar legislation has required "clear and convincing evidence" when a petitioner makes a request for an expungement of a prostitution offense because they were a victim of human trafficking. (Pen. Code, § 1203.49.) The amendments to be taken in committee establish the same burden of proof that was adopted in AB 1585 (Alejo), Chapter 708 of the Statutes of 2014 which enacted Pen. Code § 1203.49. The burden of proof established in the amendments is "clear and convincing evidence."

3) **Duress and Necessity:** This bill provides for vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers. Under current law, if a victim of human trafficking is forced to commit a crime by their trafficker then they have the defenses of duress and necessity made available to them. "All persons are capable of committing crimes except persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused." (Pen. Code, § 26.).

   a) **Duress:** The defendant is not guilty of a crime if he or she acted under duress. The defendant acted under duress if, because of threat or menace, he or she believed that his or her or someone else's life would be in immediate danger if he or she refused a demand or request to commit the crime. The demand or request may have been expressed or implied. The defendant's belief must have been reasonable. When deciding whether the defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. CALCRIM 3402.

   b) **Necessity:** Although evidence may raise both necessity and duress defenses, there is an important distinction between the two concepts. With necessity, the threatened harm is in the immediate future, thereby permitting a defendant to balance alternative courses of conduct. (*People v. Condley (1977) 69 Cal.App.3d 999, 1009-1013.*) Necessity does not negate any element of the crime, but rather represents a public policy decision not to punish a defendant despite proof of the crime. (*People v. Heath (1989) 207 Cal.App.3d 892, 901.*) The duress defense, on the other hand, does negate an element of the crime. The defendant does not have the time to form the criminal intent because of the immediacy of the threatened harm. (*Ibid.*)

4) **Expungement vs. Vacating a Conviction:** Defendants who have successfully completed probation (including early discharge) can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Penal Code Section 1203.4.) Defendants who have successfully completed a conditional sentence also are eligible to petition the court for expungement relief under Penal Code Section 1203.4. (*People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129.) Penal Code Section 1203.4 also provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation. (Penal Code Section 1203.4; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.)

   Expungement relief is not available for convictions of certain offenses. These include most felony child molestation offenses, other specific sex offenses, and a few traffic offenses. (Penal Code Sections 1203.4 and 1203.4a.) It does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4th 1424.)

   Expungement relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question in any questionnaire or application for public office or for licensure by any state or local agency. Expungement relief pursuant to Penal Code Section 1203.4a, on the other hand, does not explicitly require the person to disclose the conviction in an application for a state license or public office. Penal Code Section 1203.4a is only available for defendants convicted of a misdemeanor and not granted probation.

   By regulation, a private employer may not ask a job applicant about any misdemeanor conviction dismissed under Penal Code1203.4. (2 Cal. Code of Regs. Section 7287.4(d).])Also, under Labor Code Section 432.7, a private or public employer may not ask an applicant for employment to disclose information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program. However, if the employer is an entity statutorily authorized to request criminal background checks on prospective employees, the background check would reveal the expunged conviction with an extra entry noting the dismissal on the record.

   This bill actually proposes vacating convictions of human trafficking victims. By vacating the conviction, the remedy is actually more forceful than an expungement. Unlike an expungement, a vacatur effectively means that the conviction never occurred. Under current California law and criminal procedure, motions to vacate a conviction are generally done through the appellate process. This bill takes a novel approach of setting up a statutory framework for vacating convictions for a particular class of individuals. Essentially, this bill creates parity between human trafficking victims and those individuals who are found factually innocent of crimes they never committed.

5) **Current Expungement Law Related to Prostitution:** Under current California law a defendant who has been convicted of solicitation or prostitution may petition the court for, and the court may set aside the conviction if the defendant can show that the conviction was the result of his/her status as a victim of human trafficking. This provision of law is the result of the passage of AB 1585 (Alejo), Chapter 708 of the Statutes of 2014. The relief set

forth in AB 1585 was limited to expungement of prostitution offenses. This bill broadly expands upon these remedies to include most non-violent crimes.

6) **Inclusion of Labor Trafficking**: Unlike similar legislation in the area of human trafficking, this bill recognized that human trafficking does not only include sex trafficking. Labor trafficking victims are often not included in policy making discussions about services or benefits. This bill is broad in its application and permits labor trafficking victims to also seek the same remedies granted to sex trafficking victims. Under this bill, if a labor trafficking victim can show that they were forced to commit a non-violent crime because they were a victim of human trafficking they would be entitled to the same remedies granted to sex trafficking victims, to vacate their convictions.

7) **Human Trafficking Generally:** Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80% are women and girls and up to 50% are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).] According to the author:

"While the clandestine nature of human trafficking makes it enormously difficult to accurately track how many people are affected, the United States government estimates that about 17,000 to 20,000 women, men and children are trafficked into the United States each year, meaning there may be as many as 100,000 to 200,000 people in the United States working as modern slaves in homes, sweatshops, brothels, agricultural fields, construction projects and restaurants."

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to $1,500,000. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence from being used against a victim in court proceedings if that victim engaged in sexual conduct. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors.

a) **Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*):** In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted and is comprehensive, addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims of trafficking include making housing, educational, health-care, job training

and other federally funded social service programs available to assist victims in rebuilding their lives. Finally, the TVPA provides law enforcement with tools to strengthen the prosecution and punishment of traffickers, making human trafficking a federal crime.

b) **Recent Update to Human Trafficking Laws:** In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 increased criminal penalties for human trafficking offenses, including prison sentences up to 15-years-to-life and fines up to $1.5 million. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition prohibits the use of evidence that a person was involved in criminal sexual conduct (such as prostitution) to prosecute that person for that crime if the conduct was a result of being a victim of human trafficking, and makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition lowered the evidentiary requirements for showing of force in cases of minors.

Proposition 35 also requires persons convicted of human trafficking to register as sex offenders and expanded registration requirements by requiring registered sex offenders to provide the names of their internet providers and identifiers, such as e-mail addresses, user names, and screen names, to local police or sheriff's departments. After passage of Proposition 35, plaintiffs American Civil Liberties Union and Electronic Frontier Foundation filed a law suit claiming that these provisions unconstitutionally restricts the First Amendment rights of registered sex offenders in the states. A United States District Court judge granted a preliminary injunction prohibiting the implementation or enforcement of Proposition 35's provisions that require registered sex offenders to provide certain information concerning their Internet use to law enforcement. (*Doe v. Harris* (N.D. Cal., Jan. 11, 2013, No. C12-5713) 2013 LEXIS 5428.)

8) **Argument in Support**: According to the *Coalition to Abolish Slavery and Trafficking (CAST)*, "AB 1762 ensures that all trafficking survivors – whether sex or labor, adult or child – have an opportunity to fully expunge their criminal record of acts committed during their trafficking experience, facilitating healing and opening doors to economic self-sufficiency.

"A community of trafficking survivors, CAST's Survivor Advisory Caucus empowers survivors of human trafficking (both sex and labor) to raise awareness and create policy change in the fight against modern-day slavery. Members of the Survivor Advisory Caucus recognize that many trafficking survivors encounter legal obstacles on their journey to full independence. The National Survivor Network Survey indicates that 80% of trafficking survivors had lost or not received employment because of their criminal conviction and 50% suffered barriers to accessing housing. That was the case for Cindy (not her real name), a survivor of sex trafficking who was forced to prostitute herself and commit other crimes under the threat of harm to her family. She was incarcerated due to these crimes and when she was released, she struggled to get custody of her children because of her prior convictions. Housing was continuously denied to her. Ten years later she is still at risk of becoming homeless.

"Criminal convictions create a virtual steel wall for trafficking survivors, compounding trauma by preventing us from securing the vital resources we need to move forward with our recovery. Furthermore, trafficking victims often have convictions unrelated to prostitution; expunging only prostitution charges will not fully address our legal challenges. Having a criminal record transforms into shackles that bind us to the past, preventing educational, financial and psychological growth.

"AB 1762 enables human trafficking victims to vacate convictions for all non-violent crimes committed as a direct result of human trafficking. It adjusts the standard of proof required under current law and creates presumptions for proving the trafficking experience to avoid re-traumatizing trafficking victims seeking to clear their record. AB 1762 also fully clears criminal records, as it extends to trafficking victims the same standard of sealing arrest and court records currently provided for factually innocent people wrongly convicted of crimes. In addition, AB 1762 explicitly permits human trafficking victims to state that they have never been arrested for, charged with or convicted of the crime in question and prohibits the denial of rights or benefits, including employment and housing benefits, based on their arrest, charge or conviction."

9) **Argument in Opposition**: According to the *California District Attorneys Association*, "This proposal would create a class of people who would be presumptively exempted from liability for the crimes they commit, as long as the offense 'was a direct result of the applicant being a human trafficking victim.' Traditional defenses to criminal liability are fully adequate to address the issues that victims of trafficking may bring to excuse or justify their criminal conduct.

"We believe that AB 1762 would promote criminal conduct by creating an incentive for traffickers to enlist their victims to commit crimes, knowing full well that the people they press into service will not be held responsible for their actions. This proposal would allow a defendant whose claim was heard and rejected at trial to return to court immediately after conviction to vacate his or her conviction, notwithstanding the fact that the trier of fact heard and rejected the defense.

"In addition to being poor public policy, the bill fails to provide courts or counsel with any guidance as to how these claims are to be evaluated, and does not even include a burden of proof. Meanwhile, it amounts to a legislative attempt to strong-arm judges into granting these applications by requiring denials to be in writing. The applicants need not even show that they acted under duress to succeed in vacating their convictions.

"This bill could create speedy exonerations for a wide variety of felony and misdemeanor offenses, including registerable sex offenses, residential burglary, weapons possession, every variety of theft, vehicular manslaughter, elder abuse, child abuse, and a great many crimes of violence not listed in Penal Code section 667.5(c).

"Further, crime victims with restitution orders, stay-away orders, and other expectations of protection would be left unprotected.

"Two years ago, AB 1585 (chapter 708, Statutes of 2014) was enacted with near unanimous support, as a measured, fair-minded and reasonable path allowing trafficking victims to clean the slate without inflicting any harm on crime victims."

10) **Related Legislation**:

a) AB 1760 (Santiago), requires police officers to make a determination if a minor arrestee is victim of human trafficking or has engaged in a commercial sex act. If such a determination is made, provides the minor with immunity from arrest and prosecution for non-violent offenses committed as a direct result of being a trafficked and immunity from arrest and prosecution for commercial sex acts. AB 1760 is set for hearing in this committee on April 5, 2016.

b) AB 1761 (Weber) creates an affirmative defense against any nonviolent crime committed as a direct result of being a human trafficking victim, and would make any unproven theories regarding the effect of human trafficking on human trafficking victims admissible in criminal action. AB 1761 is awaiting a hearing in this committee.

c) SB 823 (Block), creates a presumption that if a defendant or person who has been arrested, convicted, or adjudicated a ward of the juvenile court for committing any offense while he or she was a victim of human trafficking shows evidence that the arrest, conviction, or adjudication was the result of his or her status as a victim of human trafficking, the defendant or person has met the requirements for relief under these provisions. SB 823 is awaiting a hearing in the Senate Public Safety Committee.

11) **Prior Legislation**:

a) AB 1585 (Alejo), Chapter, 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

b) AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained.

c) AB 1940 (Hill), of the 2011-12 Legislative Session, would have authorized a court to seal a record of conviction for prostitution based on a finding that the petitioner is a victim of human trafficking, that the offense is the result of the petitioner's status as a victim of that crime, and that the petitioner is therefore factually innocent. AB 1940 was held on the Assembly Committee on Appropriations' Suspense File.

d) AB 702 (Swanson), of the 2011-12 Legislative Session, would have allowed a person adjudicated a ward of the court or a person convicted of prostitution to have his or her record sealed or conviction expunged without showing that he or she has not been subsequently convicted or that he or she has been rehabilitated. AB 702 was never heard by this Committee and was returned to the Chief Clerk.

e) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and

allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the human trafficking task force.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery and Trafficking (Sponsor)
American Civil Liberties Union
California Partnership to End Domestic Violence
California Public Defenders Association
Conference of California Bar Associations
Legal Services for Prisoners with Children
National Association of Social Workers
Opening Doors, Inc.

Opposition

Alameda County District Attorney
California District Attorneys Association
Sacramento County District Attorney

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

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BILL NUMBER: AB 1762 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Campos
(Principal coauthors: Assembly Members Santiago and Weber)

FEBRUARY 2, 2016

An act to amend Sections 8712, 8811, and 8908 of the Family Code, and to amend Sections 236.1 and 11105 of, to repeal Section 1203.49, and to add Sections 236.24 and 236.25 to, the Penal Code, and relating to human trafficking.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8712 of the Family Code is amended to read:

8712. (a) The department, county adoption agency, or licensed adoption agency shall require each person who files an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department, county adoption agency, or licensed adoption agency may also secure the person's full criminal record, if any. Any federal-level criminal offender record requests to the Department of Justice shall be submitted with fingerprint images and related information required by the Department of Justice for the purposes of obtaining information as to the existence and content of a record of an out-of-state or federal conviction or arrest of a person or information regarding any out-of-state or federal crimes or arrests for which the Department of Justice establishes that the person is free on bail, or on his or her own recognizance pending trial or appeal. The Department of Justice shall forward to the Federal Bureau of Investigation any requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and shall compile and disseminate a response to the department, county adoption agency, or licensed adoption agency.

(b) Notwithstanding subdivision (c), the criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) (1) The department, county adoption agency, or licensed adoption agency shall not give final approval for an adoptive placement in any home in which the prospective adoptive parent or any adult living in the prospective adoptive home has either of the following:

(A) A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A), and subparagraph (B), of paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug- or alcohol-related offense.

(2) This subdivision shall become operative on October 1, 2008, and shall remain operative only to the extent that compliance with its provisions is required by federal law as a condition of receiving funding under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.).

(d) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The department, county adoption agency, or licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

SEC. 2. Section 8811 of the Family Code is amended to read:

8811. (a) The department or delegated county adoption agency shall require each person who files an adoption petition to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or delegated county adoption agency may also secure the person's full criminal record, if any. Any federal-level criminal offender record requests to the Department of Justice shall be submitted with fingerprint images and related information required by the Department of Justice for the purposes of obtaining information as to the existence and content of a record of an out-of-state or federal conviction or arrest of a person or information regarding any out-of-state or federal crimes or arrests for which the Department of Justice establishes that the person is free on bail, or on his or her own recognizance pending trial or appeal. The Department of Justice shall forward to the Federal Bureau of Investigation any requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and shall compile and disseminate a response to the department or delegated county adoption agency.

(b) Notwithstanding subdivision (c), the criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) (1) The department or a delegated county adoption agency shall not give final approval for an adoptive placement in any home in which the prospective adoptive parent or any adult living in the prospective adoptive home has either of the following:

(A) A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A), and subparagraph (B), of paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug- or alcohol-related offense.

(2) This subdivision shall become operative on October 1, 2008, and shall remain operative only to the extent that compliance with its provisions is

required by federal law as a condition of receiving funding under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.).

(d) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the petitioner shall be paid by the petitioner. The department or delegated county adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

SEC. 3. Section 8908 of the Family Code is amended to read:

8908. (a) A licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The licensed adoption agency may also secure the person's full criminal record, if any. Any federal-level criminal offender record requests to the Department of Justice shall be submitted with fingerprint images and related information required by the Department of Justice for the purposes of obtaining information as to the existence and content of a record of an out-of-state or federal conviction or arrest of a person or information regarding any out-of-state or federal crimes or arrests for which the Department
of Justice establishes that the person is free on bail, or on his or her own recognizance pending trial or appeal. The Department of Justice shall forward to the Federal Bureau of Investigation any requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and shall compile and disseminate a fitness determination to the licensed adoption agency.

(b) Notwithstanding subdivision (c), the criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) (1) A licensed adoption agency shall not give final approval for an adoptive placement in any home in which the prospective adoptive parent, or any adult living in the prospective adoptive home, has a felony conviction for either of the following:

(A) Any felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A), and subparagraph (B), of paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug- or alcohol-related offense.

(2) This subdivision shall become operative on October 1, 2008, and shall remain operative only to the extent that compliance with its provisions is required by federal law as a condition of receiving funding under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.).

(d) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The licensed adoption agency may defer, waive, or reduce

the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child.

SEC. 4. Section 236.1 of the Penal Code is amended to read:

236.1. (a) A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars ($500,000).

(b) A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars ($500,000).

(c) A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

(1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars ($500,000).

(2) Fifteen years to life and a fine of not more than five hundred thousand dollars ($500,000) when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.

(d) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be considered.

(e) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(f) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(9) of Title 22 of the United States Code.

(h) For purposes of this chapter, the following definitions apply:

(1) "Coercion" includes a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person's judgment.

(2) "Commercial sex act" means sexual conduct on account of which anything of value is given or received by a person.

(3) "Deprivation or violation of the personal liberty of another" includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the

threat reasonably believes that it is likely that the person making the threat would carry it out.

(4) "Duress" includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess an actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or immigration document of the victim.

(5) "Forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

(6) "Great bodily injury" means a significant or substantial physical injury.

(7) "Human trafficking victim" means a person who is a victim of any of the acts described in subdivision (a), (b), or (c).

(8) "Minor" means a person less than 18 years of age.

(9) "Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.

(10) "Nonviolent crime" means any crime or offense other than murder, attempted murder, voluntary manslaughter, mayhem, kidnaping, rape, robbery, arson, carjacking, or any other violent felony as defined in subdivision (c) of Section 667.5.

(i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section.

SEC. 5. Section 236.24 is added to the Penal Code, to read:

236.24. (a) An individual convicted of a nonviolent crime committed while that individual was a human trafficking victim may apply to the court in which the conviction was entered to vacate the conviction at any time after it is entered. The court shall grant the application on a finding that the applicant's participation in the offense on which the applicant was convicted was a direct result of the applicant being a human trafficking victim.

(b) Subject to subdivision (c), the application shall identify the applicant, the offense for which vacatur is sought, and the court in which the conviction was entered. The applicant shall describe in the application all the available grounds and evidence for vacatur of the conviction known to the applicant.

(c) To maintain the confidentiality of the applicant's status as a human trafficking victim, the application may be filed identifying the applicant by initials in any publicly available filing relating to the application. The applicant shall submit all evidence supporting the application that contains personal identifying information to the court under seal along with a statement under penalty of perjury confirming his or her identity.

(d) The application and all supporting evidence, including, without limitation, the identity statement and evidence submitted under seal, shall

be served on the state or local prosecutorial agency that obtained the conviction for which the applicant seeks vacatur. The state or local prosecutorial agency shall have 30 days for the date of receipt of service to oppose the application.

(e) If opposition to the application is not filed by the applicable state or local prosecutorial agency, the court shall deem the application unopposed and shall grant the application. If the application is opposed, the court shall hold a hearing on the application.

(f) If the court finds***, by clear and convincing evidence,*** that the applicant's participation in the offense on which the conviction was based was a direct result of the applicant being a victim of human trafficking, the court shall grant the application and vacate the conviction, strike the adjudication of guilt, and order the relief specified in Section 236.25 and may also take additional action and grant additional relief as it deems appropriate under the circumstances.

(g) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial shall be without prejudice. The court shall state the reasons for its denial in writing and, if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

(h) An individual determined to be a ward of the juvenile court in a proceeding pursuant to Section 602 of the Welfare and Institutions Code as a result of a nonviolent crime committed while that individual was a human trafficking victim may apply to the juvenile court that made that determination to have the determination set aside at any time after it was made. The court shall grant the application on a finding***, by clear and convincing evidence,*** that the applicant's participation in the offense on the proceeding was a direct result of the applicant being a human trafficking victim. Upon making the finding, the court shall order the relief prescribed in Section 786 of the Welfare and Institutions Code.

(i) In making a determination on an application under either subdivision (a) or (h), the court may consider any evidence it deems of sufficient credibility and probative value, including the sworn statement of the applicant. The statement, alone, is sufficient evidence to support the vacating of a conviction, provided the court finds that the statement is credible. Evidence in support of granting an application may also include, but is not limited to, all of the following:

(1) Certified records of a federal, state, tribal or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to Section 236.2 and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, create a rebuttable presumption that an offense was committed by the defendant as a direct result of being a human trafficking victim.

(2) A sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

(j) The court shall grant an application made under subdivision (a) or (h) if the conviction or adjudication was based on a crime constituting or arising from a commercial sex act, including violation of subdivision (b) of Section 647 or Section 653.22, upon a finding that the applicant was under the age of 18 years at the time of the offense on which the conviction is

based.

(k) This section and the rights and remedies granted to victims of human trafficking hereunder apply to any conviction entered or adjudication made prior to or after January 1, 2017

SEC. 6. Section 236.25 is added to the Penal Code, to read:

236.25. (a) For any charge, adjudication or conviction for which a human trafficking victim was granted relief under Section 236.24 of the Penal Code, the court shall order that all records in the case
be sealed pursuant to Section 851.86 and shall grant the relief provided in subdivision (b) of Section 851.8.

(b) The human trafficking victim shall be released from all penalties and disabilities resulting from the charge, adjudication or conviction, and all actions and proceedings by law enforcement personnel, courts or other government employees that led to the charge, adjudication or conviction shall be deemed not to have occurred.

(c) All of the following shall apply to a human trafficking victim granted relief pursuant to Section 236.24, or under any
substantially equivalent statute of another jurisdiction:

(1) The human trafficking victim may in all circumstances state that he or she has never been arrested for, charged with or convicted of the crime that is the subject of the charge, adjudication or conviction, including without limitation in response to questions on employment, housing, financial aid or loan applications.

(2) The human trafficking victim may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest, charge, adjudication or conviction or the victim' s failure or refusal to disclose the existence of or information concerning those events.

(3) The human trafficking victim may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, adjudication or conviction, or any arrest, charge, indictment, trial or other proceedings related thereto.

SEC. 7. Section 1203.49 of the Penal Code is repealed.

SEC. 8. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code

shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing his or her duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10) (A) (i) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To any foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing,

or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision applies if state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer

or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or

certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal

history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(u) State summary criminal history information compiled by the Attorney General and disseminated pursuant to this section shall exclude any charge or conviction for which relief has been granted pursuant to Section 236.24 or 236.25.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 29, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1924 (Bigelow) – As Introduced February 11, 2016
As Proposed to Amended in Committee

SUMMARY: Provides an exemption from the Electronic Communications Privacy Act (ECPA) for pen registers and trap and trace devices to permit authorization for the devices to be used for 60 days. Specifically, **this bill**:

1) Provides a statutory exemption in ECPA for pen registers and trap and trace devices that will ensure that orders for these devices are valid for 60 days rather than 10 days provided for in ECPA.

2) Ensures that telecommunication providers are compensated for their work when complying with a court order for a pen register or trap and trace device.

3) Clarifies that courts may suppress any information illegally obtained from a pen register or trap trace device.

EXISTING FEDERAL LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)

2) Provides, except as provided, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this *title [18 USCS § 3123*] or under the Foreign Intelligence Surveillance Act of 1978 (*50 U.S.C. 1801* et seq.). (18 USCS § 3121.)

    a) The prohibition does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or where the consent of the user of that service has been obtained. (18 USCS § 3121, subds. (a) & (b).)

b) A government agency authorized to install and use a pen register or trap and trace device under this chapter (*18 USCS §§ 3121* et seq.0 or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications. (18 USCS § 3121, subd. (c).)

c) Whoever knowingly violates the prohibition shall be fined under this title or imprisoned not more than one year, or both.

3) Provides that unless prohibited by state law, a state investigative or law enforcement officer may make application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such state. (18 USCS § 3122.)

4) Provides that an attorney for the Government, upon an application, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served. (18 USCS § 3121, subd. (a)(1).)

5) Provides that a state investigative or law enforcement officer, upon an application made as specified, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. (18 USCS § 3121, subd. (a)(2).)

6) Provides that where the law enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained which will identify: (18 USCS § 3121, subd. (a)(3).)

a) Any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network;

b) The date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information;

c) The configuration of the device at the time of its installation and any subsequent modification thereof; and

d) Any information which has been collected by the device.

7) Provides to the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device. (18 USCS § 3121, subd. (a)(3).)

8) States that the record maintained shall be provided ex parte and under seal to the court which entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order (including any extensions thereof). (18 USCS § 3121, subd. (a)(3).)

9) An order issued for installation of a pen register or track and trace device shall include: (18 USCS § 3121, subd. (b).)

a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

b) The identity, if known, of the person who is the subject of the criminal investigation;

c) The attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device, the geographic limits of the order; and

d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

e) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.

10) Provides that an order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. (18 USCS § 3121, subd.(c).)

a) Provides that extensions of such an order may be granted, but only upon an application for an order and upon the judicial finding required as specified. The period of extension shall be for a period not to exceed sixty days.

b) States that nondisclosure of existence of pen register or a trap and trace device. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the court; and the person owning or leasing the line or other facility to which the pen register or a trap and trace device is attached, or applied, or who is obligated by the order to provide assistance

to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

11) Provides that notwithstanding any other provision, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any state or subdivision thereof acting pursuant to a statute of that state, who reasonably determines that: (18 USCS § 3125.)

    a) an emergency situation exists that involves;

    b) immediate danger of death or serious bodily injury to any person;

    c) conspiratorial activities characteristic of organized crime;

    d) an immediate threat to a national security interest; or

    e) an ongoing attack on a protected computer that constitutes a crime punishable by a term of imprisonment greater than one year;

12) Provides that in the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier. (18 USCS § 3125.)

EXISTING STATE LAW:

1) Defines a "search warrant" as a written order in the name of the people, signed by a magistrate and directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

2) States that a search warrant may be issued upon any of the following grounds:

    a) When the property was stolen or embezzled.

    b) When the property or things were used as the means of committing a felony.

    c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

    d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under the age of 18 years, has occurred or is occurring.

f) When there is a warrant to arrest a person.

g) When a provider of electronic communication service or remote computing service has records or evidence, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

h) When a provider of electronic communication service or remote computing service has records or evidence showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

i) When the property or things to be seized include an item or any evidence that tends to show a violation of the Labor Code, as specified.

j) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault.

k) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

l) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms under specified provisions of the Family Code.

m) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony or a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.

n) When a sample of the blood of a person constitutes evidence that tends to show a violation of misdemeanor driving under the influence and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test.

o) When the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence re straining order. This final provision does not go into effect until

January 1, 2016. (Pen. Code, § 1524, subd. (a).)

3) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

4) Requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1924 will guarantee law enforcement can utilize a 'pen register' and 'trap and trace device' as a public safety tool by amending EPCA to add an exemption for 'pen register' and 'trap and trace devices.' AB 1924 will still require a court to find that the use of a pen register/trap and trace device is relevant to an ongoing criminal investigation, and that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime."

2) **Pen Registers and Trap and Trace Devices:** Federal law allows law enforcement agencies to use pen register and trap and trace devices, but they must obtain a court order from a judge prior to the installation of the device. However, during an emergency situation, law enforcement agencies may use these devices without a court order if they obtain the court order within 48 hours of the use of the device. Law enforcement agencies must demonstrate that there is reasonable suspicion that the use of the device is relevant to an ongoing criminal investigation and will lead to obtaining evidence of a crime for a judge to authorize the use.

   Though federal law authorizes states and local law enforcement officers to use pen register and trap and trace devices by obtaining a court order first, it does not allow them to obtain an emergency order unless there is a state statute authorizing and creating a process for states and local law enforcement officers to do so. To date, California does not have a state statute authorizing the use of pen registers or trap and trace devices.

   Pen registers and track and trace devices generally track incoming and outgoing telephone calls. They are often utilized by law enforcement to track which people in an investigation are communicating with one another and at what times. Unlike a wiretap authorization, pen registers and track and trace devices do not provide law enforcement with the content of the messages which are transmitted. Wiretap authorizations are therefore subject to a much higher standard of scrutiny. Under federal law, these authorizations can be granted on a reasonable suspicion standard, while search warrants are subject to a higher standard of probable cause.

3) **AB 929 (Chau):** Last year the legislature passed and the governor signed AB 929 (Chau), Chapter 204, Statutes of 2015. AB 929 authorized state and local law enforcement to use pen register and trap and trace devices under state law, and permits the issuance of emergency pen registers and trap and trace devices. Under this legislation, the authorization for the use

of a trap and trace device or a pen register was for 60 days from the date of issuance, with extensions of up to 60 days. However, the governor signed AB 929 prior to signing the ECPA and as a result the authorization was chaptered out by the ECPA's 10-day authorizations.

4) **Electronic Communications Privacy Act (ECPA)**: Last year the legislature passed SB 178 (Leno), Chapter 651, Statutes of 2015, which prohibited a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations. Specifically, this new law prohibits a government entity from:

   a) Compelling the production, of or access to, electronic communication information from a service provider;

   b) Compelling the production of or access to electronic device information from any person or entity other than the authorized possessor of the device; and,

   c) Accessing electronic device information by means of physical interaction or electronic communication with the device, although voluntary disclosure to a government entity is permitted.

   The ECPA also permits a government entity to compel the production of, or access to, electronic communication information subject from a service provider, or compel the production of or access to electronic device information from any person or entity other than the authorized possessor of the device pursuant to a warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to existing state law, as specified.

5) **Argument in Support**: According to the *Los Angeles District Attorney*, "Last year AB 929 (Chau) was signed into law by the governor on August 13, 2015. AB 929 authorized California law enforcement officers to apply for the installation of a pen register and trap and trace device as well as an emergency oral pen register and trap and trace device under state, not federal, law.

   "A pen register records all numbers called from (outgoing) a particular telephone line. A 'trap and trace device' records what numbers had called a specific telephone, i.e. all *incoming* phone numbers. Pen registers and trap and trace devices are extremely useful investigative tools. They are used to identify accomplices, for example.

   "AB 929 was necessary because federal law requires states to have an enabling statute authorizing the use of a pen register/trap and trace device in emergency situations, in order for local law enforcement agencies to lawfully obtain an emergency pen register/trap and trace device order.

   "Last year Governor Brown also signed SB 178 (Leno) the Electronic Communication Privacy Act (ECPA) into law on October 8, 2015. The ECPA adds Chapter 3.6 to the Penal Code. Absent a statutory exemption, ECPA precludes a government entity from compelling the production or access to electronic information from a service provider, compelling the production of or access to electronic device information from any person or entity other than

the authorized possessor of the device, or accessing electronic device information by means of physical interaction or electronic communication with the electronic device without a search warrant.

"The ECPA was undoubtedly drafted to regulate law enforcement's use of electronic serial number (ESN) identification technology. However, an unintended consequence of the ECPA is the potential nullification of AB 929. The ECPA's definitions of electronic communication and electronic communication information include the call detail records that are captured by a pen register/trap and trace device. The ECPA requires the issuance of a search warrant pursuant to Chapter 3 (PC 1523 et seq.) for electronic information. The new pen register/trap and trace device statute is in Chapter 1.5. The ECPA would therefore require law enforcement to seek a search warrant in order to obtain a pen register. Search warrants are valid for ten days, whereas pen register/trap and trap device orders are valid for 60 days under federal law and AB 929.

"Furthermore, the AB 929 amendment process resulted in a drafting error. Language regarding the compensation of telecommunication providers by law enforcement for reasonable expenses incurred while complying with the court's order was inadvertently deleted from section 638.52, which applies to written applications for a pen register/trap and trace order. The language was only included in section 638.53, which governs an oral application for an order in an emergency.

"AB 1924 provides the necessary statutory exemption in ECPA for pen registers and trap and trace devices that will ensure that orders for these devices are valid for 60 days (as called for in AB 929) rather than 10 days provided for in ECPA and ensures that telecommunication providers are compensated for their work when complying with a court order for a pen register or trap and trace device. AB 1924 also provides additional privacy protections for Californians by including a language that would allow a court to suppress any information illegally obtained from a pen register or trap trace device.

"AB 1924 still requires a court to find that the use of a pen register/trap and trace device is relevant to an ongoing criminal investigation, and that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime. We are continuing to work with representatives from the ACLU to draft language that will provide a time frame for law enforcement agencies to provide notice to individuals whose electronic devices were the subject of a court ordered pen register and/or trap and trace device."

6) **Prior Legislation**:

a) AB 929 (Chau), Chapter 204, Statutes of 2015, authorized state and local law enforcement to use pen register and trap and trace devices under state law, and permits the issuance of emergency pen registers and trap and trace devices.

b) SB 178 (Leno), Chapter 651, Statutes of 2015, which prohibited a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Office (co-sponsor)
Los Angeles District Attorney's Office (co-sponsor)
Association for Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Civil Liberties Advocacy
California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
Los Angeles Police Protective League
Professional Peace Officers Association
Riverside Sheriffs' Association

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL **No. 1924**

Introduced by Assembly Members Bigelow and Low

February 11, 2016

An act to amend Sections 638.52 and 1546.1 of the Penal Code ***and add Section 638.55 to the Penal Code***, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1924, as introduced, Bigelow. Pen registers: track and trace devices: orders.

(1) Existing law generally makes it a crime to install or use a pen register or trap and trace device without court approval. Existing law allows a peace officer to make an application to a magistrate for an order authorizing or approving the installation and use of a pen register or trap and trace device and requires a provider of wire or electronic communication service, landlord, custodian, or other person, upon presentation of an order, to provide the peace officer with all information, facilities, and technical assistance necessary to accomplish the installation, as specified, if the assistance is directed by the order.

This bill would require the requesting peace officer's law enforcement agency to compensate a provider of a wire or electronic communication service, landlord, custodian, or other person who provides facilities or technical assistance pursuant to these provisions for the reasonable expenses incurred in providing the facilities and assistance.

(2) Existing law only permits a government entity to compel the production of, or access to, electronic communication from a service provider or access to electronic device information pursuant to a warrant, wiretap order, order for electronic reader records, or subpoena.

This bill would additionally allow a government entity to compel production of the above communications and information pursuant to an order for a pen register or trap and trace device.

Digest Key

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 638.52 of the Penal Code is amended to read:

638.52.

(a) A peace officer may make an application to a magistrate for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device. The application shall be in writing under oath or equivalent affirmation, and shall include the identity of the peace officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant shall certify that the information likely to be obtained is relevant to an ongoing criminal investigation and shall include a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(b) The magistrate shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if he or she finds that the information likely to be obtained by the installation and use of a pen register or a trap and trace device is relevant to an ongoing investigation and that there is probable cause to believe that the pen register or trap and trace device will lead to any of the following:

(1) Recovery of stolen or embezzled property.

(2) Property or things used as the means of committing a felony.

(3) Property or things in the possession of a person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) Evidence that tends to show a felony has been committed, or tends to show that a particular person has committed or is committing a felony.

(5) Evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.

(6) The location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause.

(7) Evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(8) Evidence that does any of the following:

(A) Tends to show that a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, has been committed or is being committed.

(B) Tends to show that a particular person has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.

(C) Will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.

(c) Information acquired solely pursuant to the authority for a pen register or a trap and trace device shall not include any information that may disclose the physical location of the subscriber, except to the extent that the location may be determined from the telephone number. Upon the request of the person seeking the pen register or trap and trace device, the magistrate may seal portions of the application pursuant to People v. Hobbs (1994) 7 Cal.4th 948, and Sections 1040, 1041, and 1042 of the Evidence Code.

(d) An order issued pursuant to subdivision (b) shall specify all of the following:

(1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached.

(2) The identity, if known, of the person who is the subject of the criminal investigation.

(3) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order.

(4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(5) The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.

(e) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

(f) Extensions of the original order may be granted upon a new application for an order under subdivisions (a) and (b) if the officer shows that there is a continued probable cause that the

information or items sought under this subdivision are likely to be obtained under the extension. The period of an extension shall not exceed 60 days.

(g) An order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that ***, until the order, including any extensions expire, the order be sealed and the person owning or leasing the line to which the pen register or trap and trace device is attached shall not disclose the existence of the pen register and trap and trace device or the existence of the investigation to the listed subscriber or any other person*** ~~the order be sealed until otherwise ordered by the magistrate who issued the order, or a judge of the superior court, and that the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the magistrate or a judge of the superior court, or for compliance with Sections 1054.1 and 1054.7~~.

(h) Upon the presentation of an order, entered under subdivisions (b) or (f), by a peace officer authorized to install and use a pen register, a provider of wire or electronic communication service, landlord, custodian, or other person shall immediately provide the peace officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the assistance is directed by the order.

(i) Upon the request of a peace officer authorized to receive the results of a trap and trace device, a provider of a wire or electronic communication service, landlord, custodian, or other person shall immediately install the device on the appropriate line and provide the peace officer all information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by the order.

(j) A provider of a wire or electronic communication service, landlord, custodian, or other person who provides facilities or technical assistance pursuant to this section shall be reasonably compensated by the requesting peace officer's law enforcement agency for the reasonable expenses incurred in providing the facilities and assistance.

~~(j)~~

(k) Unless otherwise ordered by the magistrate, the results of the pen register or trap and trace device shall be provided to the peace officer at reasonable intervals during regular business hours for the duration of the order.

~~(k)~~

(l) The magistrate, before issuing the order pursuant to subdivision (b), may examine on oath the person seeking the pen register or the trap and trace device, and any witnesses the person may

produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the parties making them.

SEC. 2. Section 638.55 of the Penal Code is added to read:

638.55. (a) Any person in a trail, hearing, or proceeding may move to suppress wire or electronic information obtained or retained in violation of the Fourth Amendment to the United States Constitution or of this chapter. The motion shall be made, determined, and be subject to review in accordance with the procedures set forth in subdivisions (b) to (q), inclusive, of Section 1385.5.

(b) The Attorney General may commence a civil action to compel any government entity to comply with the provisions of this chapter.

(c) An individual whose information is targeted by a warrant, order, or other legal process that is inconsistent with this chapter, or the California Constitution or the United States Constitution, or a service provider or any other recipient of the warrant, order, or other legal process may petition the issuing court to void or modify the warrant, order, or process, or to order the destruction of any information obtained in violation of this chapter, or the California Constitution, or the United States Constitution.

SEC. 3.

Section 1546.1 of the Penal Code is amended to read:

1546.1.

(a) Except as provided in this section, a government entity shall not do any of the following:

(1) Compel the production of or access to electronic communication information from a service provider.

(2) Compel the production of or access to electronic device information from any person or entity other than the authorized possessor of the device.

(3) Access electronic device information by means of physical interaction or electronic communication with the electronic device. This section does not prohibit the intended recipient of an electronic communication from voluntarily disclosing electronic communication information concerning that communication to a government entity.

(b) A government entity may compel the production of or access to electronic communication information from a service provider, or compel the production of or access to electronic device information from any person or entity other than the authorized possessor of the device only under the following circumstances:

(1) Pursuant to a warrant issued pursuant to Chapter 3 (commencing with Section 1523) and subject to subdivision (d).

(2) Pursuant to a wiretap order issued pursuant to Chapter 1.4 (commencing with Section 629.50) of Title 15 of Part 1.

(3) Pursuant to an order for electronic reader records issued pursuant to Section 1798.90 of the Civil Code.

(4) Pursuant to a subpoena issued pursuant to existing state law, provided that the information is not sought for the purpose of investigating or prosecuting a criminal offense, and compelling the production of or access to the information via the subpoena is not otherwise prohibited by state or federal law. Nothing in this paragraph shall be construed to expand any authority under state law to compel the production of or access to electronic information.

(5) Pursuant to an order for a pen register ***and****/or trap and trace device~~, or both~~, issued pursuant to* ***Chapter 1.5 (commencing with*** *Sections 638.50****) of Title 15 of Part 1*** *~~to 638.53, inclusive, and subject to subdivision (d).~~*

(c) A government entity may access electronic device information by means of physical interaction or electronic communication with the device only as follows:

(1) Pursuant to a warrant issued pursuant to Chapter 3 (commencing with Section 1523) and subject to subdivision (d).

(2) Pursuant to a wiretap order issued pursuant to Chapter 1.4 (commencing with Section 629.50) of Title 15 of Part 1.

(3) With the specific consent of the authorized possessor of the device.

(4) With the specific consent of the owner of the device, only when the device has been reported as lost or stolen.

(5) If the government entity, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires access to the electronic device information.

(6) If the government entity, in good faith, believes the device to be lost, stolen, or abandoned, provided that the entity shall only access electronic device information in order to attempt to identify, verify, or contact the owner or authorized possessor of the device.

(7) Except where prohibited by state or federal law, if the device is seized from an inmate's possession or found in an area of a correctional facility under the jurisdiction of the Department of Corrections and Rehabilitation where inmates have access and the device is not in the possession of an individual and the device is not known or believed to be the possession of an authorized visitor. Nothing in this paragraph shall be construed to supersede or override Section 4576.

(8) Pursuant to an order for a pen register and/or trap and trace device issued pursuant to Chapter 1.5 (commencing with Sections 638.50) of Title 15 of Part 1.

(d) Any warrant for electronic information shall comply with the following:

(1) The warrant shall describe with particularity the information to be seized by specifying the time periods covered and, as appropriate and reasonable, the target individuals or accounts, the applications or services covered, and the types of information sought.

(2) The warrant shall require that any information obtained through the execution of the warrant that is unrelated to the objective of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order. A court shall issue such an order upon a finding that there is probable cause to believe that the information is relevant to an active investigation, or review, use, or disclosure is required by state or federal law.

(3) The warrant shall comply with all other provisions of California and federal law, including any provisions prohibiting, limiting, or imposing additional requirements on the use of search warrants. If directed to a service provider, the warrant shall be accompanied by an order requiring the service provider to verify the authenticity of electronic information that it produces by providing an affidavit that complies with the requirements set forth in Section 1561 of the Evidence Code. Admission of that information into evidence shall be subject to Section 1562 of the Evidence Code.

(e) When issuing any warrant or order for electronic information, or upon the petition from the target or recipient of the warrant or order, a court may, at its discretion, do any or all of the following:

(1) Appoint a special master, as described in subdivision (d) of Section 1524, charged with ensuring that only information necessary to achieve the objective of the warrant or order is produced or accessed.

(2) Require that any information obtained through the execution of the warrant or order that is unrelated to the objective of the warrant be destroyed as soon as feasible after the termination of the current investigation and any related investigations or proceedings.

(f) A service provider may voluntarily disclose electronic communication information or subscriber information when that disclosure is not otherwise prohibited by state or federal law.

(g) If a government entity receives electronic communication information voluntarily provided pursuant to subdivision (f), it shall destroy that information within 90 days unless one or more of the following circumstances apply:

(1) The entity has or obtains the specific consent of the sender or recipient of the electronic communications about which information was disclosed.

(2) The entity obtains a court order authorizing the retention of the information. A court shall issue a retention order upon a finding that the conditions justifying the initial voluntary disclosure persist, in which case the court shall authorize the retention of the information only for so long as those conditions persist, or there is probable cause to believe that the information constitutes evidence that a crime has been committed.

(3) The entity reasonably believes that the information relates to child pornography and the information is retained as part of a multiagency database used in the investigation of child pornography and related crimes.

(h) If a government entity obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person, that requires access to the electronic information without delay, the entity shall, within three days after obtaining the electronic information, file with the appropriate court an application for a warrant or order authorizing obtaining the electronic information or a motion seeking approval of the emergency disclosures that shall set forth the facts giving rise to the emergency, and if applicable, a request supported by a sworn affidavit for an order delaying notification under paragraph (1) of subdivision (b) of Section 1546.2. The court shall promptly rule on the application or motion and shall order the immediate destruction of all information obtained, and immediate notification pursuant to subdivision (a) of Section 1546.2 if such notice has not already been given, upon a finding that the facts did not give rise to an emergency or upon rejecting the warrant or order application on any other ground.

(i) This section does not limit the authority of a government entity to use an administrative, grand jury, trial, or civil discovery subpoena to do any of the following:

(1) Require an originator, addressee, or intended recipient of an electronic communication to disclose any electronic communication information associated with that communication.

(2) Require an entity that provides electronic communications services to its officers, directors, employees, or agents for the purpose of carrying out their duties, to disclose electronic communication information associated with an electronic communication to or from an officer, director, employee, or agent of the entity.

(3) Require a service provider to provide subscriber information.

Date of Hearing: March 29, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1927 (Lackey) – As Amended March 28, 2016

SUMMARY: Specifies that if the notice to appear in court (citation) is being transmitted in electronic form, the copy of the notice to appear issued to the arrested person need not include the signature of the arrested person, unless specifically requested by the arrested person.

EXISTING LAW:

1) Whenever written notice to appear has been prepared, delivered, and filed by an officer or the prosecuting attorney with the court pursuant to the provisions of Section 853.6 of this code, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead "guilty" or "nolo contendere." (Pen. Code, § 853.9, subd. (a).)

2) If, however, the defendant violates his or her promise to appear in court, or does not deposit lawful bail, or pleads other than "guilty" or "nolo contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of this code and which shall be deemed to be an original complaint; and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him or her and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear. (Pen. Code, § 853.9, subd. (a).)

3) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed. (Pen. Code, § 853.9, subd. (b).)

4) Species that when a person is arrested for misdemeanor, and does not demand to be taken before a magistrate, that person shall be released with a citation, as specified. (Pen. Code 853.6, subd. (a)(1).)

5) States that if the person is released with a citation, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. (Pen. Code 853.6, subd. (a)(1).)

6) Specifies that unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the judge.

(Pen. Code 853.6, subd. (b)(1).)

7) Requires the officer to deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. (Pen. Code 853.6, subd. (d).

8) Requires the officer, as soon as practicable, to file the duplicate notice, as specified. (Pen. Code 853.6, subd. (e).)

9) States that a criminal prosecution may be commenced by filing an accusatory pleading in electronic form with the judge or in a court having authority to receive it. (Pen. Code, § 959.1, subd. (a).)

10) Provides that a notice to appear issued on a form approved by the Judicial Council may be received and filed by court in electronic form, if the following conditions are met:

    a) The notice to appear is issued and transmitted by a law enforcement agency, as specified; (Pen. Code, § 959.1, subd. (d)(1).)

    b) The court has all of the following:

        i) The ability to receive the notice to appear in electronic format; (Pen. Code, § 959.1, subd. (d)(2)(A).)

        ii) The facility to electronically store an electronic copy and the data elements of the notice to appear for the statutory period of record retention; and (Pen. Code, § 959.1, subd. (d)(2)(b).)

        iii) The ability to reproduce the electronic copy of the notice to appear and those data elements in printed form upon demand and payment of any costs involved. (Pen. Code, § 959.1, subd. (d)(2)(C).)

    c) The issuing agency has the ability to reproduce the notice to appear in physical form upon demand. (Pen. Code, § 959.1, subd. (d)(3).)

11) States that if the notice to appear is transmitted in electronic form, it is deemed to have been signed by the defendant if it includes a digitized facsimile of the defendant's signature on the notice to appear. (Pen. Code, § 959.1, subd. (f).)

12) Provides that a notice to appear filed electronically need not be subscribed by the citing officer. (Pen. Code, § 959.1, subd. (f).)

13) Specifies that an electronically submitted notice to appear need not be verified by the citing officer with a declaration under penalty of perjury if the electronic form indicates which parts of the notice are verified by that declaration and the name of the officer making the declaration. (Pen. Code, § 959.1, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Conducting traffic stops as a Police Officer can be a dangerous part of the job. Officers need to control the stop, the violator inside the vehicle, the area around them, and complete the citation in a reasonable amount of time. The fewer the number of contacts with a violator the safer it is for a Police Officer to conduct his job and release the violator from being detained in the shortest amount of time.

   "This bill would update California Law to take into account the issuing of electronic citations, so that Police Officers do not have to increase the number of contacts with a violator during a traffic stop. Law enforcement agencies may stop issuing electronic citations or be hesitant to start the process because of safety concerns. Yet electronic citations are significantly more efficient than the triplicate forms used today. When we encourage law enforcement agencies and our courts to be more efficient, we should also balance that with modern laws that reflect technological advancements while maintaining officer safety."

2) **Background:** Law enforcement officers issue a citation whenever they give someone a traffic ticket. An officer also issues a citation to a person if they arrest the individual on a misdemeanor charge, but release that person without taking them into custody. A citation serves as the notice to appear in court for the person that has received the citation. A signed copy of the citation is sent to court by the law enforcement agency issuing the citation.

   When conducting traffic stops to issue citations, the officer runs the information through dispatch and returns to the violator's vehicle to fill out a triplicate form where one signed copy goes to the violator, one to the officer and one to the agency, resulting in a "two contact approach" to the vehicle.

   Again, the first contact occurs when the officer first approaches the vehicle seeking the driver's license and registration. The officer then goes back to his vehicle, writes up the ticket and approaches the vehicle a second time to have the driver sign the citation, at which time the officer gives a signed copy to the driver (two approaches).

   With new technologies, many agencies are using electronic handheld devices to be more efficient when issuing citations. This device resembles the machines a person signs when receiving a package from FedEx or UPS. With this device, once the officer completes the citation and obtains a signature (second contact), it is wirelessly sent to a printer in the patrol vehicle, where, under current law, the officer must retrieve it and bring the exact signed copy of the citation back to the violator. This results in a third contact.

3) **Benefits of Electronic Citations:** The use of electronic citations can provide efficiencies that save money for law enforcement agencies and courts. Many paper citations the courts receive contain errors due to misspelling, poor handwriting, smudged copies, and inconsistencies between violation codes and descriptions. Electronic citation technology can eliminate many of these types of errors.

   Electronic citation technology promises benefits from saving time and reducing costs, to

increasing officer efficiency. The current paper system used in most jurisdictions takes an average of 12 days to process a citation and send it to the court. With an electronic citation, this process can now be done seamlessly within seconds. Once the infrastructure is paid for, an electronic citation system promises to be a cost-effective solution since it will eliminate a great deal of overhead associated with clerical tasks. (The Use of Electronic Citations: A Nationwide Assessment, A Joint Report by the Office of Justice Programs, Bureau of Justice Assistance and the Department of Transportation, June, 2003, p. 6.)

4) **Argument in Support**: According to *The Peace Officers Research Association of California*, "Every time an officer pulls a vehicle over, they are automatically in a dangerous situation. Not only are they dealing with the threats of the roadway and traffic, they are also faced with the potential danger of the individual or individuals inside the vehicle that was pulled over. An officer never knows whether the violator is concealing a weapon, nor do they know the mental state of that person.

"Electronic citations were initially implemented to streamline a process; however, in a traffic stop, an officer typically contacts the driver to collect information, and then returns to their patrol vehicle to fill out the citation. Once the citation is complete, the officer will re-contact the driver to obtain their signature, and then give them a copy of the signed citation. With the addition of the electronic hand device, once the device is electronically signed, the officer must go back to his/her patrol vehicle to get the signed citation from the printer within their vehicle and return for a third time to the violator's vehicle. Unlike the traditional "two approach" traffic stop, this new implementation increases the stop to three approaches; therefore, increases the time and danger of a traffic stop."

5) **Argument in Opposition**: According to The California Public Defenders, "AB 1927 would allow the prosecution to use an *unsigned* electronic notice to appear both as a complaint and to issue an arrest warrant if the person failed to appear. The person would specifically have to elect to sign the electronic promise to appear.

"Under existing law, Penal Code section 853.9 provides that a written notice to appear may be issued to an arrestee and then filed with the court. If defendant fails to appear on the written notice to appear, a warrant may be issued for the defendant's arrest.

"This proposed procedure of deleting the signature is too vulnerable to fraud. It is not uncommon for individuals to use another person's identity when stopped by the police and issued a notice to appear. Historically, defense counsel has been able to demonstrate that the client was not the individual stopped by having the prosecutor compare the notice to appear signature with the client's true signature.

"In this era of widespread identity theft, an unsigned notice to appear is even more vulnerable to fraud. And finally, an unsigned notice to appear could be a tool of harassment in the hands of some rogue law enforcement official."

6) **Prior Legislation**:

   a) AB 2303 (Judiciary Committee), Chapter 567, Statutes of 2006, specified that an accusatory pleading in electronic form was sufficient if it indicates it was sworn and has the name of that officer.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (Sponsor)
California Police Chiefs Association

Opposition

California Public Defenders Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1953 (Weber) – As Introduced February 12, 2016

SUMMARY: Makes technical changes throughout sections of the Penal, Vehicle and Government Codes replacing the term "citizen" with "civilian" to accurately reflect the term currently used by law enforcement agencies to track complaints on a local, state and federal level.

EXISTING LAW:

1) Requires each state and local agency that employs peace officers to annually report to the Attorney General (AG) data on all stops, as specified, conducted by that agency's peace officers for the preceding calendar year. (Gov. Code, § 12525.5, subd. (a)(1).)

2) States that each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019. Each agency that employs more than 667 or more but less than 1,000 peace officers shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more but less than 334 peace officers shall issue its first round of reports on or before April 1, 2023. (Gov. Code, § 12525.5, subd. (a)(2).)

3) Requires the report to include the following information for each stop:

   a) The time, date and location of the stop;

   b) The reason for the stop;

   c) The result of the stop, such as no action, warning, citation, property seizure, or arrest;

   d) If a warning or citation was issued, the warning provided or violation cited;

   e) If an arrest was made, the offense charged;

   f) The perceived race or ethnicity, gender, and approximate age of the person stopped. The identification of these characteristics shall be based on the observation and perception of the peace officer making the stop. For auto stops, this requirement applies only to the driver unless actions taken by the officer apply in relation to a passenger, in which case his or her characteristics shall also be reported.

   g) Actions taken by the peace officer during the stop, including, but not limited to, the following:

i) Whether the peace officer asked for consent to search the person, and if so, whether consent was provided;

ii) Whether the peace officer searched the person or any property, and if so, the basis for the search, and the type of contraband or evidence discovered, if any; and

iii) Whether the peace officer seized any property and, if so, the type of property that was seized, and the basis for seizing the property. (Gov. Code, § 12525.5, subd. (b)(1)-(7)

4) Provides that if more than one peace officer performs a stop, only one officer is required to collect and report the necessary information. (Gov. Code, § 12525.5, subd. (c).)

5) Prohibits state and local law enforcement agencies from reporting the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure. States that, notwithstanding any other law, the data reported shall be made available to the public to the extent which release is permissible under state law, with the exception of badge number, or other unique identifying information of the officer involved. (Gov. Code, § 12525.5, subd. (d).)

6) Required the AG, in consultation with specified stake holders, to issue regulations for the collection and reporting of the required data by January 1, 2017. Mandates that the regulations specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices. To the extent possible, the regulations should also be compatible with any similar federal data collection or reporting program. (Gov. Code, § 12525.5, subd. (e).)

7) Specifies that all data and reports made under these provisions are public records, as specified, and are open to public inspection. (Gov. Code, § 12525.5, subd. (f).)

8) Limits the definition of a "peace officer" for purposes of this section to "members of the California Highway Patrol, a city or county law enforcement agency, except probation officers and officers in a custodial setting, and California state or university educational institutions." (Gov. Code, § 12525.5, subd. (g)(1).)

9) Defines "stop" for purposes of this section, as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control." (Gov. Code, § 12525.5, subd. (g)(1).)

10) Revises the content of the Department of Justice (DOJ) annual report on criminal statistics to report the total number of each of the following citizen complaints:

a) Citizen complaints against law enforcement personnel;

b) Citizen complaints alleging criminal conduct of either a felony or misdemeanor;

c) Citizen complaints alleging racial or identity profiling, disaggregated by the specific type of racial or identity profiling alleged. (Pen. Code, § 13012, subd. (a)(5)(A).)

11) Specifies that the statistics on citizen complaints must identify their dispositions as being sustained, exonerated, not sustained, unfounded, as specified. (Pen. Code, § 13012, subd. (a)(5)(B).)

12) Defines "racial or identity profiling" as "consideration of or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope and substance of law enforcement activities following a stop. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as, asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest." (Pen. Code, § 13012, subd. (e).)

13) Prohibits a peace officer from engaging in racial or identity profiling. (Pen. Code, § 13012, subd. (f).)

14) Mandates the Attorney General establish the Racial and Identity Profiling Board (RIPA) beginning July 1, 2016, for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement. (Pen. Code, §13519.4, subd. (j)(1).)

15) Provides that RIPA shall include the following members:

a) The Attorney General, or a designee;

b) The President of the California Public Defenders Association, or a designee;

c) The President of the California Police Chiefs Association, or a designee;

d) The President of the California State Sheriffs' Association, or a designee;

e) The President of the Peace Officers Research Association of California, or a designee;

f) The commissioner of the California Highway Patrol, or a designee;

g) A university professor who specializes in policing, and racial and identity equity;

h) Two representatives of civil or human rights tax-exempt organizations who specialize in civil and human rights and criminal justice;

i) Two representatives of community organizations specializing in civil or human rights and criminal justice and who work with victims of racial and identity profiling. At least one representative shall be between 16 and 24 years of age;

j) Two clergy members who specialize in addressing and reducing racial and identity bias toward individuals and groups or practices; and,

k) Up to two other members that the Governor may prescribe;

l) Up to two other members that the President Pro Tempore may prescribe; and,

m) Up to two other members that the Speaker of the Assembly may prescribe. (Pen. Code, §13519.4, subd. (j)(2)(A)-(M).)

16) Task RIPA with the following:

a) Analyzing data reported, as specified;

b) Analyzing law enforcement training on racial and identity profiling;

c) Work in partnership with state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices;

d) Conduct, and consult available, evidence based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics

e) Issuing a report that that provides RIPA's analysis of the above, detailed findings on the past and current status of racial and identity profiling and make policy recommendations for eliminating racial and identity profiling; and,

f) Holding at least three annual public meetings to discuss racial and identity profiling and potential reforms, as specified. (Pen. Code, §13519.4, subd. (j)(3)(A)-(F).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1953 would revise the term "Citizen" to "Civilian" throughout the Government, Penal, and Vehicle Codes to ensure the statute reflects the actual term currently being utilized by law enforcement agencies when conducting duties such as reporting their activities with members of the public. Additionally, the bill would clarify that all civilians are eligible to file complaints regardless of citizenship."

2) **Prior Legislation**: AB 953 (Weber), Chapter 466, Statutes of 2015, modified the definition of "racial profiling", required local law enforcement agencies to report specified information on stops to the AG's office, and established the Racial and Identity Profiling Advisory Board (RIPA).

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union, California

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1959 (Rodriguez) – As Introduced February 12, 2016

SUMMARY: Increases the felony state prison punishment for assault upon the person of an emergency medical technician with a deadly weapon, firearm, semiautomatic firearm, .50 caliber sniper rifle, or machine gun. Specifically, **this bill**:

1) Makes an assault with a deadly weapon or instrument, other than a firearm, or by means likely to produce great bodily injury upon the person of an emergency medical technician and who knows or reasonably should know the victim is an emergency medical technician engaged in the performance of his or her duties is punishable by three, four, or five years in the state prison.

2) Provides that any person who commits an assault with a firearm upon the person of an emergency medical technician and who knows or reasonably should know the victim is an emergency medical technician engaged in the performance of his or her duties is punishable by four, six, or eight years in the state prison.

3) Provides that any person who commits an assault with a semiautomatic firearm upon the person of an emergency medical technician and who knows or reasonably should know the person is an emergency medical technician engaged in the performance of his or her duties is punishable by five, seven, or nine years in the state prison.

4) Makes an assault with a machine gun or a .50 BMG rifle, as defined, upon the person of an emergency medical technician and who knows or reasonably should know the victim is an emergency medical technician engaged in the performance of his or her duties is punishable by 6, 9, or 12 years in the state prison.

EXISTING LAW:

1) Provides that any person who commits an assault upon person of another with a deadly weapon or instrument other than a firearm is punishable by 2, 3, or 4 years in the state prison or in a county jail for not exceeding one year, or by a fine not to exceed $10,000, or by both a fine and imprisonment. (Penal Code Section 245(a)(1).)

2) States that any person who commits an assault upon person of another with a firearm is punishable by 2, 3, or 4 years in the state prison or in a county jail for not less than six months and not exceeding one year, or by a fine not to exceed $10,000, or by both a fine and imprisonment. (Penal Code Section 245(a)(2).)

3) Provides that any person who commits an assault upon person of another with a semiautomatic firearm is punishable by three, six, or nine years in the state prison. (Penal Code Section 245(b)

4) Provides that any person who commits an assault upon person of another with a machine gun or a .50 BMG rifle, as defined, is punishable by four, eight, or twelve years in the state prison.

5) Makes an assault upon person of another with force likely to produce great bodily injury is punishable by two, three, or four years in the state prison or in a county jail for not exceeding one year, or by a fine not to exceed $10,000, or by both a fine and imprisonment. (Penal Code Section 245(a)(4).)

6) Provides that any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by means likely to produce great bodily injury upon the person of a peace officer or firefighter and who knows or reasonably should know the victim is a peace officer or firefighter engaged in the performance of his or her duties is punishable by three, four, or five years in the state prison. (Penal Code Section 245, subd. (c).)

7) States when battery committed upon any person and serious bodily injury is inflicted upon that person the offense is punishable by two, three, or four years in the state prison or by up to one year in the county jail. (Penal Code Section 243(d).)

8) Provides that battery upon a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, traffic control officer, or animal control officer engaged in the performance of his or her duties is punishable by a fine not exceeding $2,000; imprisonment in the county jail not to exceed one year; or by both. (Penal Code Section 243(b)(2).)

9) Provides that battery upon a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, traffic control officer, or animal control officer engaged in the performance of his or her duties, where an injury is inflicted, is punishable by imprisonment in the county jail up to one year or in the state prison for sixteen months, two or three years. (Penal Code Section 243(c)(2).)

10) Defines "battery" as "the willful and unlawful use of force and violence upon another person", punishable by up to six months in the county jail; by a fine not to exceed $2,000; or by both fine and imprisonment. (Penal Code Section 242.)

11) Defines "assault" as an "unlawful attempt, coupled with a present ability, to inflict a violent injury upon the person of another", and is punishable by a fine not exceeding $1,000; by imprisonment in the county jail not exceeding six months; or by both (Penal Code Sections 240 and 241.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Emergency medical technicians (EMTs) are often the first responders to crime, emergencies and disaster situations. And although EMTs

work alongside peace officers and firefighters in dangerous environments, the penalties for assaulting an EMT are less than those given for assault against a peace officer or firefighter.

"In fact, EMTs are 14 times more likely to be violently injured on the job than the firefighters they work alongside. AB 1959 recognizes the importance of EMT workers, who often believe that assault against them is part of their jobs. By equalizing the penalties for assault against firefighters, peace officers and EMTs, EMTs can be reassured that their safety in the workplace is equal to that of their peace officer and firefighter counterparts."

2) **Assault with a Deadly Weapon**: Under existing law, assault with a deadly weapon or with force likely to produce great bodily injury upon any person is punishable by two, three, or four years in the state prison, or in a county jail for a term not to exceed one year (Penal Code § 245 (a)(1)). This bill would make assault upon the person of an emergency medical technician in the performance of his or her duty punishable by three, four, or five years in the state prison. The existing penalty for assault with a deadly weapon upon any person, including emergency medical technicians, of two, three or four years in the state prison is a substantial penalty. Is there any evidence that this penalty is inadequate or is not being imposed in serious assault cases? What is the justification or need to increase this penalty?

3) **Assault with a Firearm**: Under existing law, assault with a firearm upon any person is punishable by two, three, or four years in the state prison, or in a county jail for a term not to exceed one year (Penal Code § 245 (a)(2)). This bill would make assault upon the person of an emergency medical technician in the performance of his or her duty with a firearm punishable by four, six, or eight years in the state prison. Is it really necessary to double the existing already substantial penalty for assault with a firearm? Is there any evidence that emergency medical technicians are being assaulted with firearms?

   Additionally, any person who personally uses a firearm in the commission of a felony is subject to an additional and consecutive term in the state prison of three, four, or ten years, even if the use of a firearm is an element of the offense (Penal Code § 12022.5 (a) and (d)). Therefore, a person who assaults an emergency medical technician, with a firearm use allegation, can be sentenced up to fourteen years in prison. Why is there a need to double the existing underlying penalty?

4) **Assault with a Semiautomatic Firearm**: Under existing law, assault with a semiautomatic firearm upon any person is punishable by three, six, or nine years in the state prison (Penal Code § 245 (d)(2)). This bill would make assault upon the person of an emergency medical technician in the performance of his or her duty with a semiautomatic firearm punishable by three, six, or nine years in the state prison. Under existing law, with the firearm use allegation mentioned above, a person that assaults any person, including emergency medical technicians can receive up to nineteen years in the state prison. Again, is there any evidence that emergency medical technicians are being assaulted with firearms? The author, in the background material, made a reference to assaults against emergency medical technicians, but failed to indicate if any of these assaults are with a firearm.

5) **Assault with a Machine Gun or .50 BMG Rifle**: Under existing law, assault with a machine gun or .50 BMG Rifle upon any person is punishable by four, eight, or twelve years in the state prison (Penal Code § 245 (d)(3). This bill would make assault upon the person of an emergency medical technician in the performance of his or her duty with a machine gun or

.50 BMG Rifle punishable by six, nine, or twelve years in the state prison. Again, under existing law, there is a three, four, or ten year firearm use enhancement (Penal Code § 12022.5 (a)). Is there any need or justification, other than not wanting to be treated differently than peace officers or firefighters, to increase the already substantial penalties for assaults upon any person with various firearms? Also, there hasn't been any evidence of an emergency medical technician ever having been assaulted with a machine gun or .50 caliber sniper rifle.

6) **Prison Overcrowding**: On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:
   - 143% of design bed capacity by June 30, 2014;
   - 141.5% of design bed capacity by February 28, 2015; and,
   - 137.5% of design bed capacity by February 28, 2016.

   In February of last year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

   While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).

   However, even though the state has complied with the federal court order, the prison population needs to be maintained, not increased. And according to the Legislative Analyst's Office (LAO), "CDCR is currently projecting that the prison population will increase by several thousand inmates in the next few years and will reach the cap by June 2018 and exceed it by 1,000 inmates by June 2019." (http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.aspx.) The LAO also notes that predicting the prison population is "inherently difficulty" and subject to "considerable uncertainty." (*Ibid.*) Nevertheless, increasing the felony prison sentences for assault with a firearm upon an emergency medical technician when the prison population is already expected to increase seems imprudent.

7) **Governor's Veto**: AB 172 (Rodriguez) of the 2015-2016 Legislative Session would have increased the penalties for assault and battery committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department, and the person committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department. AB 172 was vetoed by the Governor.

   The Governor, in his veto message, stated, "This bill would increase from six months to one year in the county jail the maximum punishment for assault or battery on health care worker

inside an emergency department.

"Emergency rooms are overcrowded and often chaotic. I have great respect for the work done by emergency room staff and I recognize the daunting challenge they face every day. If there were evidence that an additional six months in county jail (three months, once good-time credits are applied) would enhance the safety of these workers or serve as a deterrent, I would sign this bill. I doubt that it will do either.

"We need to find more creative ways to protect the safety of these critical workers. This bill isn't the answer."

If the Governor wouldn't sign a bill that contained a modest six month county jail increase to protect health care workers in within the emergency department, it's unlikely he would sign this bill.

8) **Prior Legislation**:

a) SB 390 (La Malfa), Chapter 249, Statutes of 2011, increased the penalties for assault and battery against the person of a search and rescue member engaged in the performance of his or her duty.

b) SB 406 (Lieu), Chapter 250, Statutes of 2011, increased the penalties for assault and battery against the person of a security officer or custodial assistant engaged in the performance of his or her duty.

c) SB 409 (Lowenthal), Chapter 410, Statutes of 2009, increased the penalties for assault and battery against the person of a highway worker engaged in the performance of his or her duty.

d) AB 1686 (Leno), Chapter 243, Statutes of 2007, increased the fine from $1,000 to $2,000 when an assault is committed against a parking control officer in the performance of his or her duty.

REGISTERED SUPPORT / OPPOSITION:

Support

American Medical Response
California Fire Chiefs Association
Fire Districts Association of California
California State Sheriffs' Association
Association for Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs' association
Los Angeles Professional Peace officers Association

Opposition

American Civil Liberties Union
Legal Services for Prisoners with Children

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2008 (Wagner) – As Introduced February 16, 2016

SUMMARY: Specifies that law enforcement only has a duty to inform an offender of his or her duty to register as a sex offender when he or she is released from custody for the underlying offense requiring registration. Specifically, **this bill**: requires that the person be informed of his or her duty to register only if the release, discharge, or parole, as applicable, is related to a sentence imposed as the result of a conviction for an offense for which the person is required to register under the Sex Offender Registration Act (Act).

EXISTING LAW:

1) Specifies that any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined, who is required to register pursuant to the Act, shall, prior to discharge, parole, or release, be informed of his or her duty to register under the Act by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under the Act has been explained to the person. (Pen. Code, § 290.017, subd. (a).)

2) Specifies that the official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice. (Pen. Code, § 290.017, subd. (a).)

3) Requires that the official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. (Pen. Code, § 290.017, subd. (b).)

4) States that if the conviction that makes the person subject to the Act is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy. (Pen. Code, § 290.017, subd. (b).)

5) Provides any person who is required to register pursuant to the Act and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under the

Act by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register has been explained to him or her. (Pen. Code, § 290.017, subd. (c).)

6) States that the probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release. (Pen. Code, § 290.017, subd. (c).)

7) States that any person who is required to register pursuant to the Act and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under the Act in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under the Act. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release. (Pen. Code, § 290.017, subd. (d).)

8) Requires persons convicted of specified sex offenses to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following (Pen. Code, § 290.015, subd. (a).):

   a) A statement signed in writing by the person, giving information as shall be required by DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;

   b) Fingerprints and a current photograph taken by the registering official;

   c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;

   d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,

   e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.

9) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life as follows:

a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to Penal Code Section 290(b), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, as specified. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30 day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with Penal Code Section 290(b). A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with existing law.

c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in existing law. A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30 day updates and the annual update, a transient shall provide current information as required on the DOJ annual update form.

d) A transient shall, upon registration and re-registration, provide current information as required on the DOJ registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30 day period, he or she does not need to report the new place or places until the next required re-registration. (Pen. Code, § 290.011, subds. (a) to (d).)

10) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony of the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subds. (a)&(b).)

11) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code § 290.015, subd. (b).)

12) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subds. (a)&(b).)

13) Provides that the DOJ shall make available information concerning persons who are required to register as a sex offender to the public via an internet website. The DOJ shall update the website on an ongoing basis. Victim information shall be excluded from the website. (Pen. Code § 290.46.) The information provided on the website is dependent upon what offenses the person has been convicted of, but generally includes identifying information and a photograph of the registrant.

14) Generally prevents the use of the information on the website from being used in relation to the following areas: (Pen. Code, § 290.46, subd. (l)(2).)

   a) Health insurance;

   b) Insurance;

   c) Loans;

   d) Credit;

   e) Employment;

   f) Education, scholarships, or fellowships;

   g) Housing or accommodations; and

   h) Benefits, privileges, or services provided by any business establishment.

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Regardless of their reason for their incarceration, defendants must be re-noticed of their duty to re-register as a sex offender upon immediate release from incarceration. This creates an unnecessary administrative headache for law enforcement officials who are required to re-notify offenders every time they are released from custody. AB 2008 would simply require that the defendant be informed of his or her duty to register only if the release, discharge, or parole, is related to a sentence imposed as the result of a conviction for an offense for which the person is required to register as a sex offender, ultimately relieving the unnecessary burden law enforcement officials are now required to carry."

2) **Sex Offender Registration and the Megan's Law Website:** According to a 2014 report by the California Sex Offender Management Board[1], the intent of registration was to assist law enforcement in tracking and monitoring sex offenders since they were viewed as the group most likely to commit another sex offense. It was thought that having their names and addresses known to law enforcement and with the expansion of community notification also available to the public would dissuade them from committing a new offense, enable members of the public to exercise caution around them, enable law enforcement to monitor them and, if necessary, solve new sex offense cases more readily. Although research suggests that use of a registry may help law enforcement solve sex crimes against children involving strangers more quickly, United States DOJ statistics tell us that most crimes against children (about 93%) are committed not by a stranger but by a person known to the child and his or her family, usually an acquaintance or family member.

Since 1947, earlier by far than any other state, California has required "universal lifetime" registration for persons convicted of most sex crimes. (Pen. Code, § 290.) Though every other state has instituted some form of registration since then, California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending. Almost all other states use some version of a "tiering" or "level" system which: 1. recognizes that not all sex offenders are the same, 2. provides meaningful distinctions between different types of offenders and 3. requires registration at varying levels and for various periods of time. There are nearly 100,000 registrants today in California, a number accumulated over the past 66 years since the Registry was created in 1947. In 2004 California began to provide pictures and other identifying information on the Megan's Law website for about 80% of registrants. (www.meganslaw.ca.gov)

There are about 98,000 registered sex offenders on California's registry. About 76,000 live in California communities and the other 22,000 are currently in custody. Of these offenders, 80% are posted on the state's Megan's Law web site with their full address or ZIP Code and other information, depending upon the offense they committed. About 20% are not posted or are excluded from posting on the web site by law, again depending on the conviction offense. Posting on the web site does not take into account years in the community without reoffending, the offender's risk level for committing a new sexual or violent crime, or successful completion of treatment. About one-third of registered offenders are considered "moderate to high risk" while the remaining two-thirds are "moderate to low risk" or "low risk." Local police departments and sheriff's offices are charged with managing the registration process. Registered sex offenders must re-register annually on their birthdays as well as every time they have a change of address. Transient sex offenders re-register every 30 days and sexually violent predators every 90 days. Registration information collected by law enforcement is sent to the California Department of Justice (DOJ) and stored in the California Sex and Arson Registry. If an offender's information is posted online and he fails to register or re-register on time, he will be shown as "in violation" on the Megan's Law web site. When proof is provided by local law enforcement to DOJ of a registrant's death, he or she is removed from the registry. Every ten years since the Registry was first established has been marked by a dramatic increase in the number of registrants.

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[1] http://www.cce.csus.edu/portal/admin/handouts/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf

As noted above, the original goal of registration was to assist law enforcement in tracking and monitoring sex offenders. Over time, registration was expanded to include community notification and also began to encompass a wider variety of crimes and behaviors. Due to these changes, research has focused on exploring the changes in sex 4 CASOMB "Tiering Background Paper" offender registration laws and this has resulted in a constantly growing body of research that has altered the perspective on sex offender registration. This research has made it clear that:

- The sexual recidivism rate of identified sex offenders is lower than the recidivism rate of individuals who have committed any other type of crime except for murder.
- Not all sex offenders are at equal risk to reoffend. Low risk offenders reoffend at low rates, high risk offenders at much higher rates.
- It is possible to use well-researched actuarial risk assessment instruments to assign offenders to groups according to risk level. (i.e. Low, Medium, High.)
- Risk of a new sex offense drops each year the offender remains offense-free in the community. Eventually, for many offenders, the risk becomes so low as to be meaningless and the identification of these individuals through a registry becomes unhelpful due to the sheer numbers on the registry. Research has identified differing time frames of decreased risk for the various categories of offenders (i.e. low, medium, high).
- Research on both general and sexual offenders has consistently indicated that focusing on higher risk offenders delivers the greatest return on efforts to reduce reoffending.

Completing a properly designed specialized sex offender treatment program delivered within the context of effective supervision reduces recidivism risk even further. In California, all registered sex offenders on parole or probation are now required by state law to enter and complete such a program.

3) **People v. Toloy**: In *People v. Toloy (2015), Cal. App 4th 1116*, the California Court of Appeal for the 6th Appellate District affirmed a decision in which defendant Thomas Toloy was convicted of failing to re-register as a sex offender after he had been released from county jail after a 60 day stint in custody. Mr. Toloy was not informed of his duty to re-register at the time he was released from custody. Under current law, any time a registrant is in custody for more than 30 days they have a duty to re-register their place of residence with local law enforcement. In Mr. Toloy's case, he returned to the residence he had lived in and been registered at, prior to his incarceration for 60 days in the county jail.

The court ruled that Mr. Toloy had been notified of his duty to re-register at the time he was initially registered as a sex offender, years prior. Therefore, the court determined he had actual notice of his duty to register. However the court found that law enforcement failed in their duty to notify him of his need to re-register the home he had previously registered prior to his 60 day incarceration. However, the court ruled that this duty by law enforcement was directory and not mandatory, and therefore Mr. Toloy could not use the failure of law

enforcement to notify him as a defense. Therefore, the court ruled that Mr. Toloy's conviction was valid and they affirmed the lower court.

4) **Argument in Support**: According to the *California State Sheriffs' Association,* "For unknown reasons, language that specified that a person required to register as a sex offender must be notified of his or her ongoing duty to register only when released from custody for an offense requiring sex offender registration disappeared from the Penal Code. As such, the statue has technically required every registerable sex offender to be notified of the duty to register every time he or she is released from custody regardless of whether the current offense requires sex offender registration. This inexplicable error has unnecessarily increased workload on the part of custodial officers for no discernible benefit."

5) **Argument in Opposition**: According to the *American Civil Liberties Union,* "The American Civil Liberties Union of California regrets to inform you that we oppose AB 2008 which would delete the requirement that law enforcement notify a person of his or her duty to reregister under California's sex offender law when released from custody after serving a sentence of 30 days or more. Given that the law requires a person to reregister even though his or her address remains the same and that failure to comply with this duty can be punished by up to lifetime imprisonment, we believe the Legislature made the right choice in 2007 when it imposed the requirement for law enforcement to tell people about the duty to reregister when they leave custody.

"Under current California law, a person who is required to register under Penal Code section 290 must reregister within five working days of his or her release after serving time in custody of 30 days or more, even if his or her residence has not changed and the registration on file with law enforcement is correct. (Penal Code sec. 290.015(a); *see People v. Toloy* (2015) 239 Cal.App.4th 1116, 1119 [upholding conviction for failure to register under 290.015(a) even though the registration on file accurately reflected the defendant's address].) To ensure that people understand their obligation to reregister, Penal Code section 290.017(a) requires law enforcement to inform a person of this duty on release from custody. AB 2008 would delete that notice requirement.

"The obligation to reregister upon release after serving 30 days or more in custody for any reason was added to Penal Code section 290 in 2006 (SB 1128 Alquist). The sex offender registry statute was reorganized the following year through SB 172 (Alquist) and that is when this specific notice requirement was added to the statutory scheme. As the Court of Appeals observed in *People v. Toloy* (2015) 239 Cal.App.4th at p. 1121, this was a change from prior law which required notice only on release after serving a sentence for a crime that requires registration. The court explained:

> 'Section 290.017 was enacted in 2007. Before section 290.017's enactment, former section 290 required notification when a person was released from custody only after being "confined because of the commission' of an offense requiring registration. (Former § 290, subd. (b), italics added; Stats. 2006, ch. 538, § 500, p. 4368; Stats. 1979, ch. 944, § 8, p. 3255.)

"The court concluded that the Legislature intended to change the notice requirement to apply every time a person leaves custody after 30 days or more, in order to further the objective of

ensuring that people do in fact reregister. (*Id.* at pp. 1121-22.) The court also observed the logic of this choice:

> "While one might hope that such notification would be "unnecessary" since the section 290 registrant would be aware of each and every aspect of his or her registration obligations, a timely reminder of the precise nature of those obligations is neither "superfluous" nor "confusing." This is particularly true where the precise parameters of a section 290 registrant's obligations may change over time, as they did when section 290.015 was enacted. (*Ibid.*)

"The court in *Toloy* went on to hold that the requirement to provide notice is 'directory rather than mandatory and therefore did not provide a defense to defendant.' (*Id.* at p. 1119.) In other words, while the statute directs law enforcement to provide this notice, failure to do so does not offer a defense to the crime of failing to reregister.

"The Legislature made a wise decision in 2007 when it included this notice provision. It is far from obvious or intuitive that a person would need to reregister after serving 30 days or more in custody, even if his or her residence has not changed and the registration on file with law enforcement is accurate. The facts of *Toloy* illustrate this point. While Mr. Toloy failed to reregister on release, he returned to reside at the exact same address as prior to his time in custody and his registration on file with law enforcement was accurate. Moreover, he had met with his parole officer and been equipped with a GPS tracking device which he wore continuously until the time of his arrest. Despite the fact that law enforcement knew his address and actually knew where he was every minute of every day, he was convicted for failing to reregister and sent to state prison for 32 months. Mr. Toloy was in some sense lucky: any failure to comply with the sex offender registration law can be charged as a felony and can be prosecuted under the Three Strikes Statute, potentially resulting in lifetime imprisonment.

"If the Legislature thinks it is important for people to undertake the administrative obligation to reregister upon release after serving a sentence of 30 days or more—even when law enforcement knows exactly where they are—then it seems reasonable and fair to ask law enforcement to assume the minor task of actually telling people this. If the Legislature doesn't think this duty to reregister is important enough to warrant the small effort of telling people about it when they leave custody, than it should not be a felony that can result in lengthy state prison sentences up to and including lifetime imprisonment."

6) **Prior Legislation**:

a) SB 172 (Alquist), Chapter 579, Statutes of 2007, made technical and clarifying changes to the Sex Offender Punishment, Control and Containment Act of 2006. Specifically, added the duty to notify offenders of their duty to re-register every time they are released from incarceration.

b) SB 1128 (Alquist), Chapter 337, Statutes of 2006, created the "Sex Offender Punishment, Control and Containment Act of 2006" which makes several changes to the law relating to sex offenders. These included imposing a duty on law enforcement to inform offenders of their need to register as sex offenders.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Opposition

American Civil Liberties Union
California Public Defenders Association
Legal Services for Prisoners with Children

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2012 (Bigelow) – As Introduced February 16, 2016

SUMMARY: Replaces the authorization of the Jail Industry Commission with an authorization for a Jail Industry Program, which will have similar purposes, powers and duties as the Prison Industry Authority. Specifically, **this bill**:

1) Replaces the authorization for Jail Industry Commissions with an authorization for the Jail Industry Program.

2) Allows the Boards of Supervisors of the counties of Los Angeles, Sacramento, San Diego, San Joaquin, Sonoma, Tulare, Tuolumne, and Ventura to establish a Jail Industry Program.

3) States the purpose of the Jail Industry Program includes the following:

   a) To develop and operate industrial, agricultural or service enterprises or programs under the jurisdiction of the Sheriff or Country Director of Corrections;

   b) To create and maintain working conditions within the enterprises as similar as possible to those in private industry;

   c) To ensure prisoners have the opportunity to earn funds and acquire work skills; and

   d) To allow inmates to earn time credits if so authorized.

4) Eliminates the sunset provision for programs established by any Jail Industry Commission.

EXISTING LAW:

1) Authorizes the Boards of Supervisors of counties of the 9th or 19th class, with the concurrence of the county sheriff to establish, by ordinance, a Jail Industry Commission (JIC) for that county. The JIC, if established, shall have the same purposes, powers and duties with respect to county jails as the Prison Industry Authority (PIA) has for institutions under the jurisdiction of the Department of Corrections. (Pen. Code, §§ 4325, 2800, et seq.; Gov. Code, §§ 28030, 28040.)

2) States the JIC shall be composed of nine members, with four being appointed and serving at the pleasure of the Board of Supervisors, with three being appointed by and serving at the pleasure of the Sheriff, the Chairperson of the Board of Supervisors and the Sheriff as the ex officio Chairperson of the Commission. (Pen. Code, § 4326.)

3) Requires the Boards of Supervisors, upon establishing a JIC, to establish a Jail Industries Fund to fund the operations of the Commission, to serve as a depository for any jail industry income, and to pay compensation for prisoner participants. (Pen. Code, § 4327.)

4) Sunsets the provision which states that no JIC program shall remain in existence four years after it is established. (Pen. Code, §§ 4325, 4329.)

5) States that the purposes of the PIA are: to develop and operate industrial, agricultural and service enterprises employing prisoners under the jurisdiction of the Department of Corrections, to create and maintain working conditions as much like private industry as possible, to allow prisoners to earn funds and improve work habits and skills, and to operate programs which will ultimately be self-supporting financially. (Pen. Code, § 2801.)

6) Grants the PIA: jurisdiction over the operation of all industrial, agricultural, and service operations formerly under the jurisdiction of the Correctional Industries Commission; authority to establish new industrial, agricultural and service enterprises; to initiate new vocational training programs; to assume authority over existing vocational training programs; and the power to buy and sell all equipment, supplies and materials used in the Prison Industry Authority's operations. (Pen. Code, §2805.)

7) Grants authority to the PIA to sell products and services to states and local agencies. (Pen. Code, § 2807.)

8) Requires the PIA to fix a price schedule for all PIA products and services. (Pen. Code, § 2807.)

9) Allows the PIA to sell products and services to nonprofits so long as they are 501(c)(3) organizations with a memorandum of understanding with a local education agency who provides public those products or services at no cost. (Pen. Code, § 2807, 26 U.S.C. § 501(c)(3).)

10) Gives the PIA board the same authority as the board of directors of private corporations, including but not limited to the ability to enter into contracts. (Pen. Code, § 2808.)

11) Grants the general manager of the board, with the approval of the Department of Finance, to borrow funds for operations, supply and equipment purchases, and construction and repair of facilities. (Pen. Code, § 2810.)

12) Requires the PIA to adopt and maintain a compensation schedule for inmate employees, with no compensation to exceed half the minimum wage as specified. (Pen. Code, § 2811, Lab. Code, § 1182.)

13) Prohibits any person from selling products manufactured in whole or in part by inmate labor. (Pen. Code, § 2812.)

14) Authorizes the PIA to allow inmates to make and sell small articles of handiwork, as provided. (Pen. Code, § 2813.)

15) Allows the PIA to authorize inmates to rebuild or repair salvaged or abandoned vehicles, subject to the Vehicle Code, and requires the funds from these sales be deposited in the Restitution Fund. (Pen. Code, §§ 2054, 2808, 2813.5, Veh. Code, §§ 22851.3, 24007.5.)

16) Allows the PIA to sell agricultural or animal husbandry products to private persons. (Pen. Code, § 2814.)

17) Allows the PIA to sell goods and services to foreign governments, foreign corporations or individuals with agents in foreign markets. (Pen. Code, § 2815.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Many counties across the nation have realized enormous benefits from their jail industry programs.

"Counties that operate jail industries agree that the programs offer one of the few win-win opportunities in corrections. Everyone benefits from a successful industry program—the jail, taxpayers, communities, families, and inmates. The public benefits both financially (the program provides services or products at low or no cost, and there is less vandalism and property damage in the jail) and socially (the program increases the likelihood of inmate success upon release and reduces overcrowding).

"Jail administrators and staff benefit from an improved jail environment (less tension, damage, and crowding) and are provided with a management tool both to encourage positive inmate behavior and to form a more visible and positive public image.

"Inmates clearly benefit from increased work activities, experience, and, sometimes, earnings. Further, as tension, destruction, and crowding in the jail are reduced, inmates enjoy a better living environment. For some inmates, their experience in the industries program breaks a lifetime pattern of failure by helping them secure and maintain meaningful post release employment. Every county within the state of California should have the authority to start a jail industries program within their jail system."

2) **Argument in Support**: According to the *Tuolumne County Sheriff's Office*, "Assembly Bill 2012 (Jail Industries) which would allow our county to establish and manage a Jail Industries program. The National Institute of Justice defines a jail industries program as an industry that uses inmate labor to create a product or provide a service that has value for a public or private client and that compensates the inmates.

"The main objective of AB 2012 is to transform County Jails into productive work places by encouraging inmates to learn skills, gain work ethic, continue good behavior and reduce idleness while providing benefits to the inmate, along with the facility, victims and community. In times of lean budgets, rising jail populations, and increasing outside intervention, a properly managed correctional industry can be of great value.

"Tuolumne County, like most counties across California, has a unique industry and employer base, ours being logging and tourism. Our jail industries program must focus on work skills that will give our inmates the greatest opportunity to succeed in these areas once released. Jail industries will give us the process to build and establish programs that are tailored to fit the needs of our county and the inmates housed here."

3) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "In 1987, the Legislature approved of Penal Code § 4325 as a Pilot program and thereby, with the Governor's concurrence, established a Jail Industry Commission in counties of 9th or 19th class. (Counties containing a population of 558,000 and under 600,000 are counties of the ninth class. Counties containing a population of 200,000 and under 205,000 are counties of the 19th class.) Penal Code §4325 allows the board of supervisors of a county of the ninth class or the 19th class, with the concurrence of the sheriff of the county, to establish by ordinance or resolution, a Jail Industry Commission for that county, which commission shall have the same purposes, powers, and duties with respect to the county jail as the Prison Industry Authority has under Article 1 (commencing with Section 2800) of Chapter 6 of Title 1 with respect to institutions under the jurisdiction of the Department of Corrections. "Purposes for the Jail Industry Commission were announced as:

"(a) To develop and operate industrial, agricultural, and service enterprises employing prisoners in institutions, which enterprises may be located either within those institutions or elsewhere, all as may be determined by the (Commission).

"**(b)** To create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to

"(c) To operate a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by the (local correction facility), thereby reducing the cost of its operation.

"CACJ sees no evidence that the Pilot Program had any of the desired beneficial effect upon local correctional facilities and inmates incarcerated in them. As such, and given recent trends towards the enlargement of the "prison industrial complex," we are more than concerned that this new and expansive law will be detrimental to the security and well-being of the people of the State of California.

"AB 2012, as proposed, would repeal Section 4325 in favor of a sweeping new law where a "Jail Industry Program" with purposes similar, in some regards, to the 1987 "Pilot" program, would be authorized in certain Counties, but with one major difference. As we read the proposed law, AB 2012 would then enable the affected Counties to compel prisoners to work for the benefit of unrestricted enterprises where the products of their prison labors could then be received at a substantial discount from market prices, by persons or entities well outside of the local correctional facilities.

"CACJ knows that some states have legalized for-profit prison labor; we believe that this is not something that California should enable on any scale, large or small. Experience proves that any law giving any incentive to private industry to consume prison labor or its products

must be condemned in an enlightened post-Civil War society where so many examples of dehumanization that such laws enable abound.

"CACJ is not opposed to vocational programs that educate and prepare prisoners for the existing job market. However, we believe that where such programs are publicly funded or otherwise economically feasible, their product should never be allowed to compete with the free market for outside goods and services. AB 2012 could very likely devaluate not only the dignity of human life, but also the free market for goods and services in communities outside the local correctional facilities that the law affects. CACJ opposes this law as being ill conceived and prone to abuse."

4) **Prior Legislation**: SB 262 (Presley), Chapter 1303, Statutes of 1987, authorizes the Board of Supervisors of specified counties to establish a Jail Industry Commission.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Department (Sponsor)
Tuolumne County Sheriff's Office (Sponsor)
California Public Defenders Association
California State Association of Counties
California State Sheriff's Association
Tulare County Sheriff's Office
Ventura County Sheriff's Office

Opposition

California Attorneys for Criminal Justice

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2027 (Quirk) – As Introduced February 16, 2016
As Proposed to be Amended in Committee

SUMMARY: Requires, upon the request of an immigrant victim of human trafficking, a certifying agency to certify victim cooperation on the applicable form so that the victim may apply for a T-Visa to temporarily live and work in the United States. Specifically, **this bill**:

1) Provides that upon a victim or victim's family member's request, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative with the investigation or prosecution of that crime.

2) Creates a rebuttable presumption of cooperation if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

3) Requires the certifying official to fully complete and sign the Form I-914 Supplemental B declaration, and regarding cooperation, include specific details about the nature of the crime investigated or prosecuted, and a detailed description of such cooperation, or likely cooperation.

4) Requires the certifying agency to process the declaration within 90 days, unless the person is in removal proceedings, in which case it must be processed within 14 days of request.

5) States that a current investigation, filed charges, or a prosecution, or conviction are not required for the victim to request and obtain the Form I-914 Supplemental B declaration.

6) Limits the ability of a certifying official to withdraw the certification to instances where the victim refuses to provide information and assistance when reasonably requested.

7) Prohibits a certifying entity from disclosing the immigrant status of a victim or person requesting the Form I-914 Supplemental B declaration, except to comply with federal law or legal process, or upon authorization of the person requesting the declaration.

8) Mandates a certifying agency that receives a request for a Form I-914 Supplemental B declaration to report to the Legislature beginning January 1, 2018, and annually thereafter, the following information:

   a) The number of victims that requested the declarations;

b) The number of declarations that were signed; and,

c) The number of denials.

9) Defines a "certifying entity" as any of the following:

a) A state or local law enforcement agency;

b) A prosecutor;

c) A judge;

d) The State Department of Labor; and,

e) State or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.

10) Defines a "certifying official" as any of the following:

a) The head of the certifying entity;

b) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on behalf of that agency;

c) A judge; or

d) Any other certifying official defined under specified federal regulations.

11) Defines "human trafficking" as "severe forms of trafficking in persons" pursuant to specified federal law and which includes either of the following:

a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; and,

b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

12) States that "human trafficking" also includes criminal offenses for which the nature and elements of the crime are substantially similar to the criminal activity described above, as well as an attempt, conspiracy, or solicitation to commit those offenses.

EXISTING FEDERAL LAW:

1) Allows an immigrant to receive a T-visa if the Secretary of Homeland Security determines the following:

a) Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;

b) Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;

c) Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,

d) Would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101 (a)(15)(T).)

EXISTING STATE LAW:

1) Requires certifying agencies, upon the request of an immigrant victim of crime, to certify victim helpfulness on the applicable form so that he or she may apply for a U-visa. (Pen. Code, § 679.10, subd. (e).)

2) Creates a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.10, subd. (f).)

3) Mandates certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request. (Pen. Code, § 679.10, subd. (h).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking is a form of modern-day slavery in which traffickers typically lure individuals with false promises of employment and a better life. Victims of severe forms of human trafficking are provided relief under U.S. immigration law by the Victims of Trafficking in Persons nonimmigrant visa, also known as 'T-visa.' This status allows victims of human trafficking to remain in the United States to assist in investigations or prosecutions of human trafficking violators.

   "The United States government estimates that each year up to 50,000 people are trafficked illegally into the United States against their will, mostly women and children who are brought as sex slaves.

   "The T-Visa provides trafficking victims from foreign countries temporary legal status, with an opportunity to apply for permanent residency and access to federal benefits if they cooperate with law enforcement in the investigations of their traffickers.

   "By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also make it easier for them to

assist with law enforcement and prosecutorial efforts."

2) **T Visas**: "The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status ("T visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities." (See *U and T Visa Law Enforcement Resource Guide,* Department of Homeland Security, p. 9, < https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf >.)

   "The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier." (*Id.* at pp. 9-10.)

   To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form or trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. (*Id.* at p. 9.)

   The T-visa declaration at issue in this bill is supplementary evidence of a victim's assistance to law enforcement. Although the declaration is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application. (*Id.* at pp. 10-11.)

3) **Argument in Support**: According to the *American Civil Liberties Union*, "AB 2027 complements existing law by: requiring, upon request, that an official from a state or local entity certify 'victim cooperation' on the supplemental form when specified criteria are satisfied; establishing a rebuttable presumption of survivor cooperation; requiring the certifying entity to process the supplemental form within 90 days of the request and requiring the certifying entity to report annually to the Legislature the number of survivors requesting certification and the number of supplemental forms that were signed and denied.

"AB 2027 advances the goals of the federal T visa program by streamlining the existing visa process for a vulnerable population that has been the victim of atrocious crimes, while increasing public safety at the local level by ensuring that law enforcement agencies can investigate and prosecute human traffickers."

4) **Argument in Opposition**: According to the *California State Sheriffs' Association*, "Victim cooperation can be extremely valuable when investigating criminal matters. That being said, AB 2027 contains a rebuttable presumption that effectively states that a victim is being cooperative or is likely to be cooperative unless and until he or she is not cooperative, limiting law enforcement discretion."

5) **Related Legislation**: SB 1242 (Lara) authorizes a court to reduce a county jail term to alleviate immigration consequences if specified conditions are established. SB 1242 is pending in the Senate Public Safety Committee.

6) **Prior Legislation**: SB 674 (De León), Chapter 721, Statutes of 2015, provides that upon request of a victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the applicable U-Visa certification form when the victim was a victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that criminal activity.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union
California Police Chiefs Association

Opposition

California State Sheriffs' Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 AB-2027 (Quirk (A))

*********Amendments are in BOLD*********

Mock-up based on Version Number 99 - Introduced 2/16/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 679.11 is added to the Penal Code, to read:

679.11. (a) For purposes of this section, a "certifying entity" is any of the following:

(1) A state or local law enforcement agency.

(2) A prosecutor.

(3) A judge.

(4) ~~Any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity~~ **The State Department of Labor.**

(5) ~~Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations~~ **Any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.**

(b) For purposes of this section, a "certifying official" is any of the following:

(1) The head of the certifying entity.

(2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B ~~certifications~~ **declarations** on behalf of that agency.

(3) A judge.

(4) Any other certifying official defined under Section 214.14(a)(2) of Title 8 of the Code of Federal Regulations.

(c) ~~"Qualifying criminal activity" means qualifying criminal activity pursuant to Section 7102 of Title 22 of the United States Code which means "severe forms of trafficking in persons"~~ **"Human trafficking" means "severe forms of trafficking in person" pursuant to Section 7102 of Title 22 of the United States Code** and which includes either of the following:

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(d) ~~A "qualifying crime"~~ **"Human trafficking" also** includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B ~~certification~~ **declaration**, when the victim was a victim of ~~a qualifying criminal activity~~ **human trafficking** and has been cooperative, is being cooperative, or is likely to be cooperative to the investigation or prosecution of that qualifying criminal activity.

(f) For purposes of determining cooperation pursuant to subdivision (e), there is a rebuttable presumption that a victim is cooperative, has been cooperative, or is likely to be cooperative to the investigation or prosecution of ~~that qualifying criminal activity~~ **human trafficking**, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(g) The certifying official shall fully complete and sign the Form I-914 Supplement B ~~certification~~ **declaration** and, regarding victim cooperation, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's cooperation or likely cooperation to the detection, investigation, or prosecution of the criminal activity.

(h) A certifying entity shall process an I-914 Supplement B ~~certification~~ **declaration** within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

(i) A current investigation, the filing of charges, or a prosecution or conviction are not required for the victim to request and obtain the Form I-914 Supplement B ~~certification~~ **declaration** from a certifying official.

(j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(k) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-914 Supplement B ~~certification~~ **declaration**, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-914 Supplement B ~~certification~~ **declaration**.

(l) A certifying entity that receives a request for a Form I-914 Supplemental B ~~certification~~ **declaration** shall report to the Legislature, on or before January 1, 2018, and annually thereafter, the number of victims that requested Form I-914 Form B ~~certifications~~ **declarations** from the entity, the number of those ~~certification~~ **declaration** forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: March 29, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2061 (Waldron) – As Introduced February 17, 2016

SUMMARY: Expands programs eligible for grants funds from the California Workforce Development Board (CWDB) to include "earn and learn" opportunities, and to give "earn and learn" programs preference. Specifically, **this bill**:

1) Adds and defines "earn and learn" as a program to do either of the following:

   a) A program that combines applied learning in a workplace setting with compensation so workers and students can gain work experience and skills; or

   b) Bring together classroom instructions with on-the-job training. Such programs include but are not limited to:

      i) apprenticeships;

      ii) pre-apprenticeships;

      iii) incumbent worker training

      iv) transitional and subsidized employment (particularly for persons with barriers to employment);

      v) paid internships and externships; and

      vi) project-based compensated learning.

2) Replaces apprenticeships with "earn and learn" opportunities, as defined, for programs which are eligible to receive grant funds distributed by the CWDB.

3) Adds to the list of preferences for grant proposals applications that propose participation by one or more employers who have demonstrated interest in employing individuals in the supervised population, including earn and learn opportunities.

4) Adds to CWDB's reporting requirements on grant recipients that the report include whether the grant program recipients provided training opportunities in areas related to work skills learned while incarcerated, including, but not limited to, while working with the Prison Industry Authority.

EXISTING LAW:

1) Establishes the California Workforce Investment Board (now known as the CWDB). (Unemp. Ins. Code, § 14010 et seq.)

2) Defines "supervised population" as those persons who are on probation, mandatory supervision, or post-release community supervision and are supervised by, or are under the jurisdiction of, a county. (Pen. Code, §1234, subd. (c).)

3) Establishes the Supervised Population Workforce Training Grant Program (SPWTGP), to be administered by the California Workforce Investment Board (now known as the CWDB). (Pen. Code, §1234.1.)

4) Requires the CWDB to administer the SPWTGP by doing the following:

   a) Developing criteria for the selection of grant recipients, as provided;

   b) Design the grant program application process to ensure outreach and technical assistance is available to applicants;

   c) Ensure grants are awarded on a competitive basis; ensure small and rural counties are competitive in applying for funds;

   d) Encourages applicants to develop evidence-based best practices for serving the workforce training and education needs of the supervised population; and

   e) The education and training needs of individuals with some postsecondary education and those who need basic education are addressed. (Pen. Code, § 1234.2.)

5) States that grants shall be awarded competitively. (Pen. Code, § 1243.3, subd. (a).)

6) Requires, at a minimum, that each proposed project include a provision for an education and training assessment for each supervised population participant. (Pen. Code, § 1243.3, subd. (c).)

7) States that eligible uses of SPWTGP funds include vocational training, stipends for trainees and apprenticeship opportunities. (Pen. Code, § 1243.3, subd. (d).)

8) Gives preference to SPWTGP applications which:

   a) Propose matching funds;

   b) Is proposed by a county that currently administers a workforce training program for the supervised population; and

   c) Proposes participation by one or more nonprofit community-based organizations that serve the supervised population. (Pen. Code, § 1243.3, subd. (e).)

9) Requires SPWTGP applications to set specific purposes and criteria by which the program can be evaluated, defines the subset of the supervised population the grant will serve, defines the industry sector in which the targeted supervised population will be trained and the estimated pay and demand for workers in that industry, defines the general methodology and training methods to be used, and explains how progress among the supervised population trained will be measured. (Pen. Code, § 1243.3, subd. (f).)

10) Conditions receipt of SPWTGP grant funds on recipients agreeing to provide information related to CWDB's reporting requirements. (Pen. Code, § 1243.3, subd. (g).)

11) Requires the CWDB to annually report on the outcomes achieved by grant recipients, including the overall success of the SPWTGP based on the metrics set in awarded grants, and to make a recommendation on the long-term viability of local workforce investment boards for the supervised populations. Criteria for evaluation of the SPWTGP's success shall include:

    a) The education and workforce readiness of the supervised population at the time individual participants entered the program and how this impacted the types of services needed and offered;

    b) Whether the programs aligned with the workforce needs of high-demand sectors of the state and regional economies;

    c) Whether there was an active job market for the skills being developed where the member of the supervised population was likely to be released;

    d) Whether the program increased the number of members of the supervised population that obtained a marketable and industry or apprenticeship board-recognized certification, credential, or degree;

    e) Whether the program increased the numbers of the supervised population that successfully complete a job readiness basic skill bridge program and enroll in a long-term training program;

    f) Whether there were formal or informal networks in the field that support finding employment upon release from custody;

    g) Whether the program led to employment in occupations with a livable wage; and

    h) Whether the metrics used to evaluate the individual grants were sufficiently aligned with the objectives of the program. (Pen. Code, § 1234.4.)

12) Sunsets the CWDB's reporting requirements on January 1, 2021. (Pen. Code, § 1234.4, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Returning to responsible working life after incarceration or drug/alcohol intervention is a critical and often a difficult process. Finding employment for rehabilitated persons is a major contribution to reducing recidivism rates. Business and non-profits that hire former convicts significantly help them, their families, and communities they will live in.

   "In reality, it is difficult, if not daunting, for a previously convicted person to attain employment due to lack of training, social skills, bias or fear. AB 2061 will bridge the gap in making it easier for a business or non-profit to hire those rehabilitated persons, allowing them to learn much needed job skills and experience in order to fully return to life in society."

2) **State Strategy on Employment of Former Offenders**: The federal Workforce Investment Act requires the Governor, through CWIB, to submit a State Strategic Workforce Development Plan (State Plan) to the U.S. Department of Labor. This plan outlines a five-year strategy for the investment of federal workforce training and employment services funds. With respect to services to former offenders, CWIB states the following:

   "The State Board has leveraged the [California Department of Corrections and Rehabilitation (CDCR)] expertise to help Local Boards obtain additional funding from "realignment" funds allocated to counties. A workshop was conducted by the California Workforce Association, which included CDCR and Local Board staff sharing knowledge about realignment and funding so that Local Boards might be in a better position to engage their counties in seeking funding to serve this new "realigned" population.

   "The State Board will continue to work closely with CDCR and Local Boards to encourage and develop innovative services for the ex-offender population.

   "With Policy Link and the National Employment Law Project (NELP), the State Board is helping convene Local Boards, to ensure formally incarcerated individuals have access to quality employment services. The State Board also worked with EDD and NELP to develop a directive to ensure that Local Boards comply with nondiscrimination obligations when serving individuals with criminal records. http://edd.ca.gov/Jobs_and_Training/pubs/wsd12-9.pdf.

   "Consistent with Adults Goal Objective 1, Action 2; the State Board will work with the Local Boards to identify in their Local Plan strategies they will utilize to identify and remove barriers hampering their investment of WIA Adult and Dislocated Worker funds in [career technical education] programs to the ex-offender population in their areas. (*Shared Strategy for a Shared Prosperity: California's Strategic Workforce Development Plan 2013 – 2017*, California Workforce Investment Board. (2013) Services to State Target Populations, p. 10-7, 8 <http://www.cwib.ca.gov/res/docs/state_plans/Final%20Approved%20State%20Plan/12%20Chapter%20X%20Services%20to%20State%20Target%20Populations.pdf> [as of Apr. 2, 2014].)

3) **Recidivism Reduction Fund:** Pursuant to an order from the federal Three-Judge Court presiding over the *Plata/Coleman v. Brown* cases, California was required to reduce its prison population to 137.5% of system-wide design capacity by December 31, 2013. In response, the Governor proposed an immediate plan to expand inmate housing to comply with the court order and avoid the early release of prison inmates. In the days following the release of the Governor's original plan, the Governor and the Legislature agreed to a different proposal that would take effect should the Three-Judge Court grant the state's request to modify the order to allow the state additional time to comply. The new plan, laid out in SB 105 (Steinberg), Chapter 310, Statutes 2013, stipulated that if the amount of funding necessary to comply with a revised court order extending the time to comply is less than the $315 million appropriated to facilitate immediate inmate housing without any early release, the Director of Finance is to direct the Controller to transfer the first $75 million of such savings to the Recidivism Reduction Fund. Any additional savings is to be allocated as follows: 50% reverted to the General Fund and 50% transferred to the Recidivism Reduction Fund. The purpose of the Recidivism Reduction Fund is to fund activities aimed at reducing the state's prison population, including, but not limited to, reducing recidivism. (Pen. Code, § 1233.9.)

4) **Argument in Support**: According to *Legal Services for Prisoners with Children*, "We believe that the escalation of tough-on-crime policies over the past three decades has not made us safer. We believe that in order to build truly safe and healthy communities we must ensure that all people have access to adequate housing, quality health care and education, healthy food, meaningful work and the ability to fully participate in the democratic process, regardless of their involvement with the criminal justice system.

   "Often, formerly incarcerated people are denied jobs for which they are qualified on the basis of a past conviction. The purpose of these grants is to provide a path for formerly incarcerated people to find employment. By giving preference to employers who hire formerly incarcerated people, this bill asks these grant recipients to put their money where their mouths are; to hire the people they are training for employment. This will increase the incentive to hire formerly incarcerated people and hopefully decrease bias against hiring them.

   "This bill may result in a greater diversity within the recipients of the grant money, as well as improving the quality and responsiveness of these organizations to the people they serve.

   "Passing this bill is a step towards full restoration of people's rights upon release from custody. For these reasons, we urge your 'aye' vote on this bill."

5) **Related Legislation**:

   a) AB 2288 (Burke) would require the CWDB and each local board to ensure that pre-apprenticeship training in the construction trades follows the Multi-Craft Core Curriculum, and that programs funded by the federal Workforce Innovation and Opportunity Act of 2014 and directed to apprentice-able occupations in the construction trades include plans to increase the percentage of women in those trades.

   b) AB 2105 (Rodriguez) would set the sunset date for the CWDB's requirement to report to the Legislature a report on the board's findings and recommendations regarding "earn

and learn" job training opportunities to January 1, 2020.

6) **Prior Legislation**: AB 2060 (V. Manuel Pérez), Chapter 383, Statutes of 2014, established the Supervised Population Workforce Training Grant Program.

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Services for Prisoners with Children

Opposition

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2078 (Kim) – As Introduced February 17, 2016

SUMMARY: Conforms the punishment for a violation of a protection order issued after conviction of an offense involving domestic violence to the punishment for other similar protective orders. Specifically, **this bill**:

1) States that the first violation of a post-conviction domestic violence restraining order is punishable by imprisonment in the county jail for up to one year, by a fine of up to $1,000, or both.

2) Requires a first violation to include imprisonment in the county jail for at least 48 hours if the violation resulted in physical injury.

3) States that a second or subsequent violation occurring within seven years and involving an act of violence, or a credible threat of violence, is punishable by imprisonment in the county jail not to exceed one year, or by 16 months, two or three years in state prison.

EXISTING LAW:

1) Authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)

2) Requires a court, in all cases where the defendant is charged with a crime of domestic violence, to consider issuing a protective order on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue. (Pen. Code, § 136.2, subd. (e)(1).)

3) Allows a court, in any case in which a complaint, information, or indictment charging a crime of domestic violence has been filed, to consider, in determining whether good cause exists to issue a protective order, the underlying nature of the offense charged, and information provided to the court through a background check, including information about the defendant's prior convictions for domestic violence, other forms of violence or weapons offenses, and any current protective or restraining order issued by a criminal or civil court. (Pen. Code, §§ 136.2, subd. (h) and 273.75.)

4) Provides in all cases in which a criminal defendant has been convicted of a crime of domestic violence, as defined in relevant sections of the Family Code, or any crime that requires the defendant to register as a sex offender, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may

be valid for up to 10 years, as determined by the court. (Pen. Code, § 136.2, subd. (i)(1).)

5) Provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Pen. Code, § 136.2, subd. (b).)

6) States that a violation of specified restraining orders, including elder abuse and domestic violence restraining orders issued as a condition of probation, is considered contempt of court and punishable as follows:

   a) The first violation is punishable as a misdemeanor with imprisonment in the county jail for up to one year, by a maximum fine of $1,000, or both; and,

   b) A second violation or subsequent violation occurring within seven years, and involving an act of violence or a credible threat of violence, is a wobbler, punishable by imprisonment in the county jail for up to one year, or in state prison for 16 months, or two or three years. (Pen. Code, § 166, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Every nine seconds a woman is assaulted in the United States, and nearly 20 people per minute are physically abused by their intimate partner. The consequences of domestic violence are devastating and can cross generations and last a life-time. By making appropriate cross-references in the Penal Code, AB 2078 closes a loophole ensuring that all those who violate domestic violence restraining orders are held accountable. Restraining orders are one of the best ways to protect victims of domestic violence from further abuse and AB 2078 would provide more fitting sentencing guidelines than the general contempt of court guidelines it currently falls under."

2) **Domestic Violence Restraining Orders**: As a general matter, the court can issue a protective order in any criminal proceeding, including domestic violence cases, pursuant to Penal Code Section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

   When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. For example, when domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. (Pen. Code, § 1203.097.)

   Finally, in some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic-violence-related offense, rape, spousal rape, statutory

rape, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).)

3) **Criminal Contempt**: Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended "to do some further act or achieve some additional consequence." (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order." (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

   Criminal contempt under Penal Code Section 166 is a misdemeanor, and so proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, supra, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt "is entitled to the full panoply of substantive and due process rights." (*People v. Kalnoki* (1992) 7 Cal.App.4th Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

4) **Necessity for this Bill**: There are certain violations of protective orders that are punished with an enhanced misdemeanor sentence when a violation of that order is proven. These include: (1) protective orders based on the court's finding of good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur; (2) a protective order issued as a condition of probation in a domestic violence case; (3) an order issued after conviction in an elder or dependent adult abuse case; (4) a restraining order after conviction of a sex offense involving a minor; and (5) other family court protective orders.

   In 2007, legislation was enacted authorizing a court to issue a protective order for 10 years upon a defendant's felony conviction of willful infliction of corporal injury. Subsequently, in 2011, the Legislature expanded this authority to cover all cases involving domestic violence, regardless of the sentence imposed. (SB 723 (Pavley), Chapter 155, Statutes of 2011.) However, a conforming cross reference was inadvertently omitted from the contempt of court statute, which among other things describes the punishment for violating restraining orders. (See Pen. Code, § 166.)

   In contrast, last year when the legislature amended the elder abuse statute, Penal Code section 368, to allow for post-conviction restraining orders in all elder abuse cases regardless of whether probation was granted, the bill was amended to include a conforming cross reference to the statute that provides how a violation of the restraining order is punished, Penal Code section 166. (See SB 352 (Block), Chapter 279, Statutes of 2015, [June 17, 2015 amendments].)

   This bill makes the punishment for a violation of a post-conviction domestic violence restraining orders consistent with that for other post-conviction restraining orders against defendants convicted of abuse.

5) **Argument in Support**: According to the *California District Attorneys Association*, "[E]xisting law allows courts to issue criminal protective orders for up to ten years when a defendant is convicted of domestic violence under Penal Code section 273.5. AB 2078 simply updates California's Penal Code in order to provide the appropriate cross reference so that the willful violation of a domestic violence restraining order may be considered contempt of court under PC 166."

6) **Argument in Opposition**: According to *Legal Services for Prisoners with Children*, "We do not believe that increasing punishments will increase public safety. Resources that will go towards arresting, prosecuting, and incarcerating someone could instead be put towards resources that might better prevent people from violating restraining orders, like counseling or mental health care. Restorative justice has been shown to be highly successful at reducing and eliminating domestic violence. Solutions to violence against others should be addressed at the root, instead of reactionary responses which punish people."

7) **Related Legislation**:

   a) AB 2340 (Gallagher) exempts from the gun-free school zone regulations a person holding a valid license to carry a concealed firearm who is also protected by a domestic violence protective order. AB 2340 will be heard in this committee today.

   b) SB 883 (Roth) is substantially similar to this bill, except with regard to stalking protective orders. SB 883 is pending in the Senate Public Safety Committee.

8) **Prior Legislation**:

   a) SB 352 (Block), Chapter 279, Statutes of 2015, authorizes a court to issue a post-conviction protective order in cases involving elder or dependent adult abuse.

   b) SB 723 (Pavley), Chapter 155, Statutes of 2011, allows a court to issue a protective order for up to 10 years when a defendant is convicted of an offense involving domestic violence, regardless of the sentence imposed.

   c) AB 289 (Spitzer) Chapter 582, Statutes of 2007, allows a court to issue a protective order for 10 years upon a defendant's felony conviction of willful infliction of corporal injury.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association

Opposition

California Attorneys for Criminal Justice
Legal Services for Prisoners with Children

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2088 (Linder) – As Amended March 28, 2016

SUMMARY: Requires the court to suspend the driving privilege for six months or impose an appropriate period of community service for any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death. Specifically, **this bill**:

1) Provides that if the prosecution agrees to a plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, in satisfaction of, or a substitute for the charge of leaving the scene of an accident resulting in injury or death without stopping and properly identifying himself or herself, the prosecutor shall state for the record the factual basis for the satisfaction or substitution, including whether the defendant was involved in an accident in which a person was injured.

2) States that if the court accepts the defendant's plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, and the prosecutor's states that the driver of the vehicle was involved in an accident where a person was struck, the court shall immediately suspend the convicted driver's privilege to operate a motor vehicle for a period of six months or require the convicted driver to complete community service as the court deems appropriate.

EXISTING LAW:

1) Provides that a court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses:

   a) Failure of a driver involved in an accident where property is damaged to stop and exchange specified information;

   b) Reckless driving proximately causing bodily injury;

   c) Failure of a driver to stop at a railroad crossing as required;

   d) Evading or fleeing from a peace officer in a motor vehicle or upon a bicycle; and,

   e) Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting or causing to be presented any false or fraudulent insurance claim. (Veh. Code, §13201.)

2) States that the Department of Motor Vehicles (DMV) immediately shall revoke the privilege of a person to operate a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses:

   a) Failure of the driver of a vehicle involved in an accident resulting in injury or death to stop or otherwise comply, as specified;

   b) A felony in which a motor vehicle is used, except as specified; and,

   c) Reckless driving causing bodily injury. (Veh. Code, § 13350, subd. (a).)

3) Provides that the driver of any vehicle involved in an accident resulting in damage to any property, including a vehicle, shall immediately stop the vehicle and exchange information, as specified, or leave in a conspicuous place on the vehicle or other property damaged written notice giving the name and address of the driver of the vehicle involved. The failure to comply with these requirements is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed $1,000, or by both a fine and imprisonment. (Veh. Code, § 20002.)

4) Requires the driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person to immediately stop the vehicle at the scene of the accident and to fulfill specified requirements. The failure to comply is punishable by imprisonment in the state prison for 16 months, two, or three years, or by imprisonment in a county jail not to exceed one year, or by a fine of not less than $1,000 nor more than $10,000, or by both a fine and imprisonment. If the accident results in death or permanent, serious injury, the offense is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than $1,000 nor more than $10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subds. (a) & (b).)

5) Provides that a person who flees the scene of the crime after committing vehicular manslaughter with gross negligence or vehicular manslaughter while intoxicated, upon conviction for that offense, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. Existing law provides that this additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. (Veh. Code, § 20001, subd. (c).)

6) Provides that every person convicted of vandalism or affixing graffiti, as specified, may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed one year during a time other than his or hers hours of school attendance or employment. (Pen Code, § 594.6, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "There's no question that hit-and-runs have reached epidemic proportions in our state with California Highway Patrol (CHP) citing nearly 79,000 total hit-and-run collisions in 2015 alone. This is up from the 73,000 collisions reported in 2014. AB 2088 is an effort to reduce the number of hit-and-runs and bring justice to the victims by ensuring that offenders face consequences for their reckless decisions.

   "When committing a hit-and-run carries fewer penalties than driving under the influence, the choice to flee the scene of an accident is tempting for drunk drivers especially since their judgment is already impaired. California's weak penalty structure for hit-and-runs must be corrected to deter potential offenders, protect victims, and create greater highway safety."

2) **Limits Court Discretion**: This bill requires the court to suspend the driving privilege for six months or impose a an appropriate period of community service for any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death.

   Vehicle Code Section 13201 authorizes a court to suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction for failure of a driver involved in an accident where property is damaged to stop and exchange specified information.

   Additionally, the court may impose any condition of probation reasonably related to the offense and aimed at discouraging such conduct in the future. (See People v. Lent (1975) 15 Cal. 3d 481, 486.) The imposition of a period of community service would be considered a valid condition of probation and well within the courts discretion.

   This bill limits the court's discretion in that it requires the court to either suspend the defendant's driving privilege for six months or impose a period of community service. Both of which options the court may already exercise, in appropriate cases, in the sound exercise of its discretion.

3) **Violates Apprendi v. New Jersey:** In this bill, in order for the court to impose the additional sanction of, either, a six month license suspension or community service, the prosecution must state on the record the factual basis for the substitution for the original charge, including whether the defendant was involved in an accident in which a person was injured.

   The Sixth amendment right to a jury trial applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-304.)

   In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a

preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

In this bill, the additional punishment of a license suspension or community service is triggered by a factual finding by the court, based on a statement by the prosecution that the defendant was involved in an accident and a person was injured clearly violates the defendant's Sixth amendment right to a jury trial as to the finding of that particular fact.

4) **Argument in Support:** According to *Santa Monica Spoke,* "As you are well aware the number of hit-and-run incidents in California has grown to epidemic proportions in the past few years. In the Los Angeles area alone we know there are about 20,000 hit-and-run traffic incidents each year. We have long been in support of legislation to stiffen penalties for this crime that we feel represents a symptom of disconnect to humanity in our communities. Victims of hit-and-runs are not limited to just other motor vehicle drivers, but in fact pedestrians and bicyclists who's injuries are more severe or life threatening as more venerable road users.

"Current penalties for hit-and-runs do not reflect the seriousness of the crime nor act as an effective deterrent. It is unconscionable for instance that, under current law, it is possible for hit-and-run drivers who leave their injured victims on the side of the road to enter plea bargain agreements whereby they evade punishment and are able to return to their normal lives like nothing happened.

"As a society we must ensuring hit-and-run drivers face consequences for their reckless inhumane decision to flee the scene of an collision. AB 2088 will increase roadway safety, bring justice to victims, and deter others from committing hit-and-run crimes."

5) **Argument in Opposition:** According to the *American Civil Liberties Union*, "AB 2088 would require a court to either immediately suspend the driving privileges of all defendants who plead guilty or nolo contendere to a violation of Vehicle Code section 20002 under circumstances specified by the bill, or require the convicted driver to complete community service as the court deems appropriate. We believe that this bill unnecessarily removes a court's discretion to suspend a defendant's driver's privilege in appropriate circumstances.

"Specifically, AB 2088 would require courts to immediately suspend, for six months, the driver's privilege of any defendant who pleads guilty or nolo contendere to a violation of Vehicle Code section 20002 (failure to comply with specified requirements in accidents resulting only in damage to property) which was originally charged as a violation of Vehicle Code section 20001 (failure to comply with specified requirements in accidents resulting in injury to a person) when the prosecution states for the record that the driver for the vehicle was involved in an accident in which a person was struck. (See Vehicle §§ 20001, 20002.) Alternatively, the court must require the convicted driver to complete community service as the court deems appropriate.

"However, under current law, courts already have within their discretion the ability to suspend, for six months, the driver's privilege of any defendant convicted of a violation of

"Vehicle Code section 20002 – regardless of whether the defendant was involved in an accident in which a person was struck. (Vehicle Code § 13201.) Likewise, courts already have discretion to order community service as a term of probation. (Penal Code § 1203.1, subd. (j).) By requiring courts to immediately suspend drivers' privileges in *all* cases in which a defendant is convicted of a violation of Vehicle section 20002 under the circumstances specified by the bill or otherwise order the convicted driver to complete community service, AB 2088 unnecessarily an improperly strips courts of their discretion."

6) **Prior Legislation**:

a) AB 534 (Linder), of the 2015-2016 Legislative Session, required the court to suspend the driving privilege for six months of any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death. AB 534 failed passage in the Assembly Public Safety Committee.

b) AB 1532 (Gatto), of the 2013-2014 Legislative Session, would have required that the privilege to operate a motor vehicle shall be suspended for six months for any person convicted of being a driver of a vehicle involved in an accident where a person is struck, but not injured, and the driver of the vehicle leaves the scene of the accident without exchanging required information, as specified. AB 1532 was vetoed by the Governor.

c) AB 2337 (Linder), of the 2013-2014 Legislative Session, would have increased from one to two years the mandatory suspension of the privilege to operate a motor vehicle for any person convicted of leaving the scene of an accident resulting in injury or death without exchanging required identification information. AB 2337 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

American Motorcyclist Association
Crime Victims United of California
Association for Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs' Association
Walk and Bike Mendocino
West Hollywood Bicycle Coalition
Santa Monica Spoke
Streets Are For Everyone
Los Angeles Walks
Los Angeles County Bicycle Coalition
Forged By Fire Coalition

Opposition

American Civil Liberties Union
California Attorney for Criminal Justice
California Public Defenders Association Specifically, **this bill**: >

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744